

# TABLE OF CONTENTS

Volume I	11111111111111
(10 m / 10 m / 1	PAGE
Complaint (January 11, 1956)	JA 1
Order Designating Hearing Examiner (January 11, 1956)	JA 10
Answer of Respondent The Texas Company (April 16, 1956)	JA 11
Answer of Respondent The B. F. Goodrich Company (April 16, 1956)	JA 19
Order Sustaining Interlocutory Appeal (November 28, 1956)	JA 23
Exception of Respondent The Texas Company (December 7, 1956)	JA 26
Exception of Respondent The B. F. Goodrich Company (December 12, 1956)	JA 27
Motion of Respondent The Texas Company (December 31, 1956)	JA 28
Answer of Counsel Supporting the Complaint in Opposition to the Motion of December 31,	
1956, Filed on Behalf of Respondent The Texas Company (January 8, 1957)	JA 30
Order Denying Motion by Respondent The Texas Company for Disclosure of Names,	4
Addresses and Employers of Parties Interviewed But Not Called as Witnesses (Janu-	10,0
arv 9, 1957)	JA 31

		PAGE
M	otion to Strike of Respondent The Texas Com- pany (November 8, 1957)	JA 32
S	Company (November 19, 1957)	JA 69
M	otion to Strike of Respondent The B. F. Good- rich Company (December 23, 1957)	JA 76
0	rder Disposing of Motions to Strike Certain Testimony and Exhibits Filed by the Re-	
	spondents (January 2, 1958)	JA 100
M	Iotion of the Texas Company to Withdraw Issues and to Strike Evidence (February 7,	
	1958)	JA 108
0	Order Denying Motion of the Texas Company to Withdraw Issues and to Strike Evidence	
	(February 24, 1958)	JA 113
I	nterlocutory Appeal by Respondent The Texas Company from Order of the Hearing Exam- iner Denying Its Motion to Withdraw Issues	
	and to Strike Evidence (March 6, 1958)	JA 115
	Order Denying Interlocutory Appeal (March 26, 1958)	JA 127
1	Proposed Findings of Fact and Conclusions  Filed by Respondent The Texas Company (April 1, 1959)	JA 129
	Transport in American Mannes	UA 129
	Proposed Findings of Fact, Conclusions of Law, and Order—Counsel Supporting the Com-	TA 1FO
	plaint (April 1, 1959)	JA 152

PAGE
JA 153
JA 172
JA 174
JA 175
JA 187
JA 188
JA 189
JA 191
JA 193
JA 199
JA 200
JA 234
JA 239
JA 246

	FAGE
Exceptions Filed Pursuant to Rule 4.21 on Behalf of Texaco Inc. (Formerly The Texas Company) (January 8, 1963)	JA 247
company) (vaniatry of 1000)	VII
Texaco's Motion to Disqualify Chairman Dixon (February 18, 1963)	JA 287
Order Denying Motion to Disqualify (February 26, 1963)	JA 290
20, 2000	
Memorandum of Chairman Dixon in Response to the Motion of Respondent Texaco, Inc.,	
That He Withdraw From This Proceeding	JA 291
Motion of Texaco Inc. for Leave to File Memorandum Amplifying Answers to Certain	
Questions Asked by Commissioners During Oral Argument (April 11, 1963)	JA 293
Memorandum of Texaco Inc. Amplifying Answers to Certain Questions Asked by Com-	
missioners During Oral Argument (April 11, 1963)	JA 294
Decision and Order (April 15, 1963)	JA 302
Excerpts from Testimony	JA 304
Petition to Review and Set Aside an Order of	
the Federal Trade Commission (Texaco	9:
Inc.) (June 12, 1963)	JA 2404
Petition to Review and Set Aside an Order of the Federal Trade Commission (The B. F.	
Goodrich Company) (June 17, 1963)	JA 2422

#### TESTIMONY

#### Witnesses for the Commission:

	9	2			PAGE
Maurice A.	Wolfe.		8		•
maurice A.	Direct			JA 307,	JA 1317
	Cross		TA 915	JA 310,	TA 1399
	Redirect		JA 310,	JA 415,	TA 499
	Recross		• · · · · · · · · · · · · · · · · · · ·		JA TAL
Charles R.	Frohlin .				
Charles It.	Direct				JA 318
	Cross				JA 319
	0			.,,.	-
Ben Halsell					
201 11000	Direct			JA 322,	JA 1310
	Cross			JA 323,	JA 1310
	Redirect	JA 333,	JA 397,	JA 417,	JA 1316
	Recross				JA 410
S. C. Bartle	ett:				
	Direct .			.JA 350,	JA 1305
	Cross			.JA 391.	JA 1308
	Redirect			.JA 396,	JA 1309
		1. 4			· Ø
George H.	Glenn:				- 1
A Delivery of the	Direct .			.JA 423,	JA 1295
	Cross .			JA 432,	JA 1323
					a
Joseph A.	Hoban:		TA 404	TA 400	TA 1000
	Direct		JA 434,	JA 480,	JA 1330
	Cross .			.JA 492,	JA 1344
A 10 10	Redirect	·		.JA 491,	JA 1349

			PAGE
James L. Do	88: /		B
	Direct		JA 499
			JA 513
		JA 519	JA 689
. 0	Recross		JA 695
Donald J. K	night:		
	Direct		JA 521
			JA 527
1-01	Redirect		JA 528
Arne L. Car	lson:		
			JA 531
	Cross		JA 537.
AUDITOR DE	Redirect		JA 540
Hubert J. R		1	1 14 1
912 - 1 1 1000	Direct		JA 542
Arthur V. B	ichmond:		
	Direct :		JA 545
	Cross		JA 554
	Redirect		JA 561
Joseph C. A	rev:		14
0			JA 563
	Cross		JA 568
	Redirect	·	JA 570
Harold A. G	ehrke:		
That will had	Direct		JA 570
	Cross		JA 576
	Redirect	·	JA 584
Arthur Ede	lson:		
10 1 AL SE	Direct		JA 585
P. 1 401 - 214	Cross		JA 593
	Redirect		JA 618
	Recross		JA 620

			PAGE
Jim Aberne	hy:		T west
			JA 622 .
	Cross		JA 626
		1	
Irving M. C			
	Direct		JA 628
,	Cross		JA 642
1	Redirect		JA 652
Carl H. Ols			TA 050
	Direct		JA 652
1 .			
	Recross		JA 664
Taba Office			
John O'Kee	Direct		JA 665
	Cross	·	JA 669
	Cross		. DA 003
Francis Dw	or.		
r ranois. Dw			JA 670
	Cross		JA 675
			*
1.00	Recross	4	
		4.	
Theodore H	Shiff, Jr.:		
	Direct	******************************	JA 684
they be	Cross		JA 688
1.	Redirect	,	JA 689
. /.			,
Raymond P			
./.	Direct		. JA 696
		* 11	
Frank A. B			
	Direct		. <b>JA</b> 703

HOA at					P	AGE
Henry Tra	auscht:					
	Direct			,	TA	·708
	Cross	£			· JA	
. 3/8 -				1		
M. E. Burg	gess:	a 1,-1	1.			
1 .	Direct				JA	717
	Cross .				JA	
	Redirect				JA	
	Recross					
	3, "				-	:
Glen Cram	er:					
	Direct .	·		JA 743	. JA	765
,	Cross			JA 747	. JA	766
	Redirect				JA	748
			,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,			
Clifford Ba	ackencamp:			1.6		4
	Direct				JA	749
	Cross				JA:	757
,	Redirect			JA 763	. JA	764
1	Recross	***************************************			JA	764
	* *	*		, ,		
Vaden L. C				2. 1		
	Direct	******			JA	767
	Cross				JA	771
				11		
Kenneth L.	O'Mara:					;
-2 -	Direct	******************			JA	776
- 1 1 1	Cross				JA	779
/	Redirect				JA	782
. ,	Recross			***************************************	JA	783
100 .						
D. B. Unde	rhill:					
	Direct				JA.	783
Dir All	Cross			***********	JA	792

#### Volumes I and II

		PAGE
William E.	McDaniel:	A Company of
	Direct	JA 793
* 1	Cross	JA4800
	1000	
Victor L. T	oft:	
	Direct	JA 800
*	Cross	JA 807
		9
Edward G.	Seidenglanz:	
	Direct	JA 810
	Cross	JA 816
	Redirect	JA 818
- 4	Recross	JA 819
		7
	Volume II	
Carl A. Nel	son:	
	Direct	JA 820
	Cross	JA 825
	Cross Redirect	JA 831
		La Maria Maria
Paul L. Rer	ken:	
	Direct	JA 831
	Cross Redirect	JA 840
	Redirect	JA 844
Bernard F.	Kossek:	
-	Direct	JA 845
	Cross	JA 850
*		
Clarence E.	Cornell:	
	Discort	JA 852
	Cross	JA 879
	Redirect	JA 883
1.1		

			PAG	E
Ted Olsen:			1	
	Direct		JA 8	384
	Cross		JA 8	393.
	Redirec	t	JA 8	397
	Recross	t ,	JA 8	399
1			·	
Al Scoville				
	Direct		JA 8	
	Cross		JA 9	104
Percy L. K	anago.			
reity D. It.			JA 9	200
	Cross		JA 9	
	0.005		· ·	030
Mannie O.	Hansen:		1.	
	Direct '		JA 9	13
	Cross		JA 9	
	Redirec	t	JA 9	38
				,
Lawrence B				
	Direct		JA 9	
	Cross		JA 9	39
James S. Z	alondok.			
V-4	Direct		TA O	40
1	Cross		TALO	==
	Redirect	TA OOF	* 4 0	
THE RESERVE	Recross	JA 965,	TAQ	75
	1/21/2		OHO	
George Hof	fman:			4
AR ALVA	Direct	***************************************	JA 9	76
	Cross		JA 9	78
D-1-1-70 34	7	400000		
Ralph W. M				
1	Direct		JA 9	
	Cross .	in the state of th	JA 9	
	Redirect		JA 9	
	Decross		JA 9	
			1 "	

# XI Volume II

Y 15		PAGE
Kelly McCa	mn:	
	Direct	JA 998
	Cross	JA 1002
• .:	Redirect	JA 1008
-	Recross	JA 1009
		***
C. F. Sanfo	rd, Jr.:	
HOW I	rd, Jr.: Direct	JA 1010
	Cross	OTT TOTO
	Redirect	JA 1037
		A Burth.
D. A. Zimm	erman:	* * * * *
•	Direct	JA 1040
	Cross	JA 1046
	Cross	JA 1050
George Sna	pka:	
	Direct	JA 1051
	Direct Cross	JA 1053
	Redirect	JA, 1054
	`	· · · · · · · · · · · · · · · · · · ·
Thomas Jan	mes Meggs:	
	Direct	JA 1055
	A December 1	-a
Leonard R.	Akin:	
	Direct	JA 1057
	Cross	JA 1059
-/1	Cross Redirect	JA 1061
1911	April 1	
Van J. Smi	th:	
	Direct	, JA 1118
2000	Cross	JA 1120
17.51 6.5	Redirect	JA 1122

A design			PAGE
W. E. Smith			
<i>i.</i> ,	Direct	***************************************	JA 1063
2	Cross		JA 1070
	Redirec	otJA	1074, JA 1076
(4 4 4	Recros	8	JA 1075
John Morga	n Husso	ng:	
			JA 1076
	Cross		JA 1080
		The second second	
Elmer W. J.		-	
	Direct	***************************************	JA 1081
	Cross .		JA 1084
Lee Barton			
1.			
	Cross	***************************************	JA 1092
	**		
John W. Gr			TA '4000
	Direct	•	JA 1093
	Cross		JA 1097
*			
K. R. Rober	rts:		TA 1000
	Cross	***************************************	JA 1113
William E.	Childan		
William E.	Dinast	38:	TA 1102
	Creek	·v	JA 1128
	Cross	***************************************	JA 1120
Reagan Fer	emaon.	Te .	la: \ .
reagan rei	Direct	Jr.:	TA 1129
	Cross		
		ant ·	TA 1134
	Becro	9ct	TA 1127
	Trect of		oA IIoi

		F. October 22	•
		\ . ·	PAGE
O' TO TO THE		•	
C. T. Fitts:	D:		TA 1137
	Direct		JA 1140
	Cross		JA 1142
	*.		
Donald E. La	a Garde:		
	Direct		JA 1146
41	Cross		JA 1148
Keller F. Me	Iton:		•
Hener 2, 220	Direct		JA 1153
	211000	*	
Harvey G. T	allow.		
Harvey G. 1	Direct		JA 1160
•			TA 1168
	D. di	JA	1179 TA 1175
	Redirect	JA	TA 1175
	Recross		JA 1110
		•	
George R. B	oyd:		
, .	Direct		JA 1176
*	Cross		JA 1179
	Redirect		JA 1183
John D. Hul	me.		
John D. Liu	Direct		JA 1184
4 4 4	Cross		JA 1189
	CIUSS		
C D D:4:	E.L.	0	
Sam B. Ridd	nek:		TA 1109
	Direct		JA 1132
	4		
William Rus	sell Bridg	œs:	T . 1101
	Direct		JA 1194
	Cross	***************************************	JA 1198
	Redirect		JA 1202
			1
Earl Martin	Gause:		*
	Direct	<i>f</i>	JA 1202
	222000	(	V 1000 W

Richard Eli	as Tidwell:	
7 1	Direct	JA 1208
	Cross	JA 1215
T-1- D G.		
John D. Sec	IU:	T. 4040
ka.	Direct	JA 1218
	Cross	JA 1230
	Redirect	JA 1236
	Recross	JA 1237
Herman Gil		
	Direct	JA 1237
	Direct Cross	JA 1241
.,		
Guy R. Sinc	lair:	
	Direct	JA 1243
Claude M.	Chambers:	
		TA 1940
1 - 1	Direct	ОД 1240
H. Arpin K	oehler: 0	
ari rii pin Is	Direct	TA 1940
	Cross	TA 1000
	Cross	JA 1203
Abe Goldste	•	
Abe Goldste		71 4000
	Direct	JA 1266
	Cross	JA 1268
	Redirect	JA 1271
	Recross	JA 1272
William B.	Price:	
U. Take I are	Direct	JA 1272
	· A	

		PA	GB -
C. E. Avery:	Salama 7	737 11-	107/
0. 11. 11. 01.	Direct	JA	1277
	Direct	JA	1281
	Redirect	JA	1281
	* 19	Infi	
Garland T. D	uke:		
	Direct		1282
	Cross		1284
		JA	1285
the date of	dami(1	4	8
Guy Walter S	Scott:		4000
	Direct	JA	1286
	Cross	JA	1292
11.00	499/10		
Witnesses F	or Respondents:		1
W unesses I'	in thesponarius.		
Henry M. Li	vingston:		
	Direct	JA	1351
	Cross	JA	1360
	RedirectJA 1366	, JA	1369
	Recross		
	greenedwork a		4-14
Edward J. M	fidden:		. 7.
	Direct	JA	1369
	Cross	JA	1378
	Redirect	JA	1383
	Recross	JA	1384
	Jayri (L.		
H. E. Smiley	Direct		4000
	Cross		
Wall of the	Redirect	JA	1404
	Recross	JA	1405

William V. Brooks:         Direct         JA 1405           Cross         JA 1415           Cecil Baird:         Direct         JA 1417           Cross         JA 1422           Larry O'Brien:         Direct         JA 1432           Cross         JA 1433           Tony Bonacci:         JA 1434           Cross         JA 1443           Cross         JA 1444           M. A. Buntz:         Direct         JA 1445           Cross         JA 1456           Redirect         JA 1470           Norman L. Jacobson:         JA 1470           Cross         JA 1480           Redirect         JA 1480           Redirect         JA 1480           Vincent H. Allen:         Direct         JA 1495           Cross         JA 1495	101				·	PA	GE/
Direct   JA 1405	William V Bro	ooks.					
Cross	D	irect				TA	1405
Cecil Baird:         JA 1417           Cross         JA 1422           Larry O'Brien:         JA 1425           Cross         JA 1432           Redirect         JA 1433           Tony Bonacci:         JA 1434           Cross         JA 1444           Redirect         JA 1444           M. A. Buntz:         Direct         JA 1445, JA 1549           Cross         JA 1470           Norman L. Jacobson:         JA 1470           Cross         JA 1480           Redirect         JA 1480           Redirect         JA 1480           Ross Rittenhouse:         JA 1483           Cross         JA 1491           Vincent H. Allen:         Direct         JA 1493           Cross         JA 1493           Cross         JA 1493	C	rogg	••••••			TA	1415
Direct   JA   1417   1422			,		<b>~·····</b>	JA	TTLU
Direct   JA   1417   1422	Cooil Boird.			•			
Direct		iroct				TA	1417
Direct	D.	11000				TA	1499
Direct		1088				45	1422
Direct	Lawre O'Prion			•			
Cross						TA	1405
Redirect							
Direct							
Direct	K	edirect .		•••••••		JA.	1433
Direct	m n .		1:				
Cross	Tony Bonacci:						
M. A. Buntz:       JA 1445, JA 1549         Cross       JA 1456         Redirect       JA 1470         Norman L. Jacobson:       JA 1470         Cross       JA 1480         Redirect       JA 1484         Ross Rittenhouse:       JA 1485         Cross       JA 1491         Vincent H. Allen:       JA 1493         Cross       JA 1493         Cross       JA 1493         Cross       JA 1493	D	rect				JA	1434
M. A. Buntz:       JA 1445, JA 1549         Cross       JA 1456         Redirect       JA 1470         Norman L. Jacobson:       JA 1470         Cross       JA 1480         Redirect       JA 1484         Ross Rittenhouse:       JA 1485         Cross       JA 1491         Vincent H. Allen:       JA 1493         Cross       JA 1493         Cross       JA 1493         Cross       JA 1493	C	ross				JA	1440
Direct	R	edirect .		······		JA	1444
Direct         JA 1470           Cross         JA 1480           Redirect         JA 1484           Ross Rittenhouse:         JA 1485           Cross         JA 1491           Vincent H. Allen:         JA 1493           Cross         JA 1493           Cross         JA 1493	D	ross				JA	1456
Direct         JA 1470           Cross         JA 1480           Redirect         JA 1484           Ross Rittenhouse:         JA 1485           Cross         JA 1491           Vincent H. Allen:         JA 1493           Cross         JA 1493           Cross         JA 1493	. T. T.						
Cross         JA 1480           Redirect         JA 1484           Ross Rittenhouse:         JA 1485           Cross         JA 1491           Vincent H. Allen:         JA 1493           Cross         JA 1493           JA 1493							- 150
Redirect         JA 1484           Ross Rittenhouse:         JA 1485           Cross         JA 1495           Vincent H. Allen:         JA 1493           Cross         JA 1493           Cross         JA 1493							
Ross Rittenhouse:  Direct JA 1485 Cross JA 1491  Vincent H. Allen:  Direct JA 1493 Cross JA 1493							
Direct         JA 1485           Cross         JA 1491           Vincent H. Allen:         JA 1493           Direct         JA 1493           Cross         JA 1493	В	ledirect				JA	1484
Direct         JA 1485           Cross         JA 1491           Vincent H. Allen:         JA 1493           Direct         JA 1493           Cross         JA 1493	2 2 2 2						*
Cross         JA 1491           Vincent H. Allen:         JA 1493           Direct         JA 1493           Cross         JA 1493							
Vincent H. Allen: Direct JA 1493 Cross JA 1493		Direct				JA	1485
Direct JA 1493 Cross JA 1493		ross		••••••		JA	1491
Direct JA 1493 Cross JA 1493	Vincent H. Al	len:					*,
Cross						JA	1493
		*				, ,	2000

		** .*	. /	>		PAG	8
Stanton Swa	nk: Direct		1	* .	- 3	7	
	Direct					JA 1	500
	Cross					JA 1	507
				14.			
Herbert Bol	te:					2 . 3	30
	Direct					JA 1	510
	Cross					JA 1	515
Joseph Nov	ak. Jr.:	,					
,	Direct				,	JA 1	519
	Cross					JA 1	526
	01000						
Lawrence S	tarr:						
Law Tonoc &	Direct		4.	*		JA 1	528
	Cross.					JA 1	538
	Demico					011	011
Fred Opoce	nelve.						
Fred Opoce	Direct				***********	TA 1	542
	Cross .				***********	OH.1	OTO,
Roger Wils	on Tw.						
noger wills	Thirt					TA 1	551
	Correct .		***********			TA 1	555
	Cross .					TA	1550
. ,	Kedired	π		*********		JA	1999
D. 1D T.							
Paul B. Hie	cks:				JA 1560	T	1107
	Direct				JA 1500	, JA	1101
	Cross .				JA 1569	, JA	2173
	Redirec	3t				JA	2177
	**	4.		.*			
John Neme	e:						
E 1. 1.							
	Cross					JA	1582

#### XVIII

SHAN.		PAGE
John A. McGuire:		
Direc	t	JA 1585
Cross		JA 1592
Patrick Delle Graz	zie:	
Direc	t	JA 1595
Cross		JA 1604
John E. Roessner:		
Direc	t	<b>JA</b> 1608
Cross	J	JA 1618
		* =
Stanley Grelecki:		1
Direc	<b>st</b>	
Cross	3	JA 1643
Redi	rect	JA 1654
Clayton Jackman:		34 4055
	st,	
Cros	8	JA 1659
T C 11		
Loy Spradling:	et	TA 1650
	8	
Cros		3A 1000
Fred Pryor:		
Direct Direct	ot	JA 1666
Cros	8	JA 1673
Redi	rect	JA 1712
1000		
Cleatus Rogers:		
Dire	ct	JA 1675
Cros	et	JA 1681
STATE OF		

### Volumes II and III

		PAGE	
Paul L. May	arg.	and the land agely	
I am D. may	Direct	JA 1683	
	Cross	JA 1689	
	Redirect	JA 1691	
	Recross	TA 1692	
	hecross		
	Volume III		,
Lowell L. Ba	4		
Lowell L. D	Directo	TA 1693	
5.7	Cross	TA 1698	1
/	Cross	TA 1709	1
	Redirect	JA 1702	
		and the second	
Dale Retke:		TA 1709	
3 1 6	Direct	JA 1703	
	Cross	JA 1709	
	Redirect	JA 1711	
Gordon B. I	atterson:		
	Direct	JA 1713	
	Cross	JA 1720	
	Redirect	JA 1723	
	,		
Arvid F. Tu	bbs:		
	Direct	JA 1723	
	Cross	JA 1730	1
Raymond B	olm:		
Isa, mond I	Direct	JA 1732	
7	Cross	JA 1732 JA 1739	)
1 4 1 1 5	6	•	
Colley Bur	att.		
Coney Dur	Direct	JA 1740	)
	Cross	JA 1740	1
	Cross		
Mervin A.	T-mmol.		
Mervin A.	Direct	JA 1750	,
	7.	The state of the s	
	Cross		
	Recross	JA 1760	,

James L.	Hendrickson:	
	Direct	JA 1769
	Cross	JA 1777
Howard O	. Whiting:	
/	Direct	
za * ,	Cross	JA 1789
.0 .	Cross Redirect	JA 1792
	Recross	JA 1793
Curtis Too		
	Direct	
	Voir Dire	JA 1799
	Cross	JA 1801
Vincent Ca	apolupo:	
	Direct	JA 1805
	Direct	JA 1812
	Redirect	JA 1815
		18
James F.	McCue:	
	Direct	JA 1815
*	Cross	
William C	lyde Sizemore:	
	Direct	
	Cross	
***	Redirect	JA 1831
	Recross	JA 1832
		****
Charles T.	Llewellyn:	
	Direct	JA 1833
4 3 4	Cross	JA 1838
A	0	
Ray V. Ba		
	Direct	JA 1845
× 1	Cross	JA 1854

PAGE

Almon G. Lane: Direct JA 1859, JA 1863 Voir Dire ...... JA 1863 Cross. ..... JA 1866 Recross JA 1869 R. Leo Leonard: Harold Crawford: Direct JA 1875 JA 1882 Cross Arthur Neufeld: Direct JA 1884 Cross JA 1892 Redirect JA 1895 Max Edward Mandell: JA 1896 .....JA 1903 Redirect A. James De Ambra: Direct JA 1904 Cross ...... JA 1911 Pierce N. Johnston: William Linton: JA 1923 Direct ..... 

			PA	GE .
Burney Bar	ker:			
	Direct		JA	1932
	Cross		JA	1940
		wie i	a.	
Milton Ellin		to manifest		
	Direct		JA	
*	Cross		JA	1944
		The state of the state of	<b>e</b> 30	1
Alfred A. F	ranklin:		- 0	
				1945
	Cross		JA	1949
Lee R. Moss	, Jr.:		TA	1050
	Direct		JA	1902
	Cross	· · · · · · · · · · · · · · · · · · ·	JA	1999
	nearrec	L	JA	1966 1967
	Recross		JA	1901
O'Neal Emb				
O Mean Fillio	Direct		JA	1969
	Cross		-	1974.
	Rodirec	•		1978
	redirec	t		10.0
P. K. Conne	r:	0.	•	
			JA	1979.
	Cross		JA	1984
W	Redirec	t	JA	1986
Tell II				
C. T. Fitts:	٠,٠			
	Direct .			
SHELT !			JA	
dent who	Redirec	t	JA	2006
			. · · · ·	
E. L. Patton				
	Direct .			2007
Chilly Miles				2017
	Redirec			
¥	Recross	JA 2033	, JA	2035

			PA	GE.	
B. C. Chiles			1		20
D. O. OHICS	Direct	•	JA.	2036	
	Cross		JA :	2040	
	Redirect				
F. H. Worsh	nam:			1.	
	Direct				*
	Cross		JA :	2047	
	Redirect .	•	JA :	2049	
	Recross .		JA ;	2050	
Kenneth He	th:				
	Direct		JA :	. 4	· ·
	Cross		JA :		
	Recross .		JA	2061	
			4.		
Charles W.	Moore:			1,. '	
	Direct		JA	2061	
	Cross		JA	2067	
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	Direct		JA	2069	
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John McGal			TA	9075	
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			JA	-	
	Dour con .		911	2000	-
Charles B. S	Swann:				
J			JA	2099	
				2104	
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Charles Eubanks: Direct 5 JA 2106 Cross JA 2112 Redirect JA 2114 A. L. McAnally: Direct ..... JA 2114 H. Helmcamp: JA 2123 Direct K. R. Roberts: 'Direct \_\_\_\_\_JA 2129, JA 2138 Voir Dire JA 2136 JA 2153 Redirect John T. Bolger: JA\_2155 Direct JA 2159 Cross ..... A. G. Russell: Direct ..... JA 2161 JA 2165 Cross : Redirect JA 2166 H. L. Cain: Direct \* JA 2177 John Killips: Direct JA 2191 

D. B. Under	hill:	JA 2210	
	Direct	TA 9991	
* * * * * * * * * * * * * * * * * * * *	Cross	JA 2221	
W. B. West:	•		
W. D. West.	Direct	JA 2223	
	Direct	JA 2233	
	01055		
Rosgen Fer	guson, Jr.:		
Treagan T ci	guson, Jr.: Direct	JA 2235	
·	Cross	JA 2242	
	Redirect		
	Redirect	011 2210	
О П 6	lana.	(C)	
George H. C	Direct	JA 2243	
	Direct	JA 2263	
	Voir Dire	JA 2266	*
	Cross	JA 4400	
	0 .	• •	
Eliha Madie	•	•	
Elihu Madis	son:	•	
Elihu Madi	son: DirectJA	2269, JA 2301	
Elihu Madi	son:	2269, JA 2301	
	son: Direct JA Voir Dire	2269, JA 2301	
	on: Direct JA Voir Dire	2269, JA 2301 JA 2287	
	on: Direct JA Voir Dire	2269, JA 2301 JA 2287	
	son: Direct JA Voir Dire  Direct Direct Cross	2269, JA 2301 JA 2287 JA 2308 JA 2319	
	Direct JA Voir Dire  Direct Cross Redirect JA	2269, JA 2301 JA 2287 JA 2308 JA 2319 2326, JA 2330	
	Direct JA Voir Dire  Direct Cross Redirect JA  JA  JA	JA 2308 JA 2319 2326, JA 2330 2332, JA 2336	
	Direct JA Voir Dire  Beckman: Direct Cross Redirect JA JA Recross	JA 2308 JA 2319 2326, JA 2330 2332, JA 2336 JA 2328	
	Direct JA Voir Dire  Direct Cross Redirect JA  JA  JA	JA 2308 JA 2319 2326, JA 2330 2332, JA 2336 JA 2328	
Theodore N	Direct JA Voir Dire  Seekman: Direct Cross Redirect JA JA Recross Voir Dire JA 2231, JA	JA 2308 JA 2319 2326, JA 2330 2332, JA 2336 JA 2328	
	Direct JA Voir Dire  Beckman: Direct Cross Redirect JA  Recross Voir Dire JA 2231, JA	JA 2308 JA 2319 2326, JA 2330 2332, JA 2336 JA 2328 2334, JA 2340	
Theodore N	Direct JA Voir Dire  Seekman: Direct Cross Redirect JA JA Recross Voir Dire JA 2231, JA	2269, JA 2301 JA 2287  JA 2308  JA 2319 2326, JA 2330 2332, JA 2336  JA 2328 2334, JA 2340	
Theodore N	Direct JA Voir Dire  Beckman: Direct Cross Redirect JA JA Recross Voir Dire JA 2231, JA l: Direct Voir Dire	2269, JA 2301 JA 2287  JA 2308 JA 2319 2326, JA 2330 2332, JA 2336 JA 2328 2334, JA 2340  JA 2341 JA 2357	
Theodore N	Direct JA Voir Dire  Beckman: Direct Cross Redirect JA  Recross Voir Dire JA 2231, JA	2269, JA 2301 JA 2287  JA 2308 JA 2319 2326, JA 2330 2332, JA 2336 JA 2328 2334, JA 2340  JA 2341 JA 2357	•

### XXVI

#### Volume IV

#### COMMISSION'S EXHIBITS

	PAGE
1A	JAX 1
1B	JAX 2
2A	JAX 3
2B •	
2C	JAX 5
2D :/	JAX 6
210	JAX 7
3A	JAX 8
3B	JAX 9
5	
6	
8	JAX 12
10	JAX .13
11	JAX 14
12	
13A	JAX 17
14	
17	
18A	JAX 19
19A	
19B	JAX 23

#### XXVII

	PAGE
20A	JAX 24
20B	JAX 25
21A-1	JAX 26
21A-2 ,	JAX 27
21B	JAX 28
22A	JAX 29
22B	JAX 30
22C	JAX 31
22D	JAX 32
23A	JAX 33
24A	JAX 34
24B	JAX 35
25A	JAX 36
26A	JAX 37
26B	JAX 38
27A	JAX 39
27B ,	JAX 40
270	JAX 41
27D	JAX 42
27E	JAX 43
27F	JAX 44
28A	JAX 45
29Д	JAX 46
29B	JAX 47

#### XXVIII

#### . Volume IV

	· · · · · · · · · · · · · · · · · · ·	PAGE
30		JAX 48
31		JAX 49
34A		JAX 50
34B		JAX 51
35A		JAX 52
35B		JAX 53
35C		JAX 54
36		JAX 55
37	2	JAX 56
39A		JAX 57
39B		JAX 58
39C	*	JAX 59
39D		JAX 60
39E		JAX 61
39F		JAX 62
39G		JAX 63
39H	***************************************	JAX 64
39I		JAX 65,
40A		JAX 66
40B	4	JAX 67
40C		JAX 68
40D	Augenium in the second	JAX 69
41		JAX 70
43		JAX 71

#### XXIX

	PAGE
43	JAX 72
44	JAX 73
45A	JAX 74
45B	JAX 75
46A	JAX 76
46E	JAX 77
47	JAX 78
48A	JAX 79
48B	JAX 80
48C	JAX 81
48D	JAX 82
48E	JAX 83
48F	JAX 84
48G	JAX 85
48H	JAX 86
48I	
48J	JAX 87
49A	JAX 88
	JAX 89
,	JAX 90
	JAX 91
22	JAX 92
50	JAX 93
53A	JAX 94
53B	JAX 95

#### XXX

I	PAGE
57A	JAX 96
57B	JAX 97
57C	JAX 98
*57D	JAX 99
57E	JAX 100
57F	JAX 101
59	JAX 102
60	JAX 103
62	JAX 104
63	JAX 105
64	JAX 106
68A	JAX 107
68B	JAX 108
68C	JAX 109
69A	JAX 110
69B	JAX 111
70A	JAX 112
70B	JAX 113
70C	JAX 114
70D	JAX 115
71	JAX 116
72	JAX 117
73	JAX 118
74	JAX 119

#### XXXI

		PAGE
	75	JAX 120
	76	JAX 121
	77A	JAX 122
	77B●	JAX 123
	78A	JAX 124
	78B	JAX 125
	81A	JAX 126
	81B	JAX 127
	81C	JAX-128
	81D	JAX 129
	81E	JAX 130
	82A	JAX 131
	82B	JAX 132
	83A Y	JAX 133
	83B	JAX 134
-	84A	JAX 135
	84B	JAX 136
	85A	JAX 137
	85B	JAX 138
	85°C	JAX 139
	85D	£ ,
	85E	JAX 140
	07	JAX 141
	88	JAX 142
4.	88	JAX 143

#### xxxii/

, 89A	JAX 144
89B	JAX 145
89C	JAX 146
91C	JAX 147
92 /	JAX 148
94A	JAX 149
95	JAX 150
96	JAX 151
97-98	JAX 152
99	JAX 153
100A	JAX 154
100B	JAX 155
100C	JAX 156
101A	JAX 157
101B	JAX 158
101Ĉ	JAX 159
102A	JAX 160
102B	JAX 161
102C	JAX 162
103A	JAX 163
103B	JAX 164
103C *	JAX 165
104	JAX 166
105	JAX 167

#### XXXIII

0 4	
106	JAX 168
1144	JAX 169
114B	JAX 170
114¢	JAX 171
114D	JAX 172
115A	JAX 173
115B	JAX 174
115C	JAX 175
115D	JAX 176
116	JAX 177
117	JAX 178
118	JAX 179
119	JAX 180
120	JAX 181
121	JAX 182
128A	JAX 183
	JAX 184
	JAX 185.
	JAX 186
128D	JAX 187
	JAX 188
129A	JAX 189
129B	£
100A	
130B	. JAA 131

#### XXXIV

130C		JAX 192	
130D	1	JAX 193	
130E	7 7	JAX 194	
132		JAX 195	
134A		JAX 196	
134B		JAX 197	
134C		'JAX 198	
134D		JAX 199	
134E		JAX 200	
134F		JAX 201	
136	2 2 3	JAX 202	
137		JAX 203	
138		JAX 204	
142A		JAX 205	
142B		JAX 206	
148A		JAX 207	
148B		JAX 208	
1480		JAX 209	
148D		JAX 210	
148E	2	JAX 211	
148F		JAX 212	
148G		JAX 213	
148H		JAX 213	
148I	<u> </u>	JAX 214	

#### XXXV

	Volume IV	PAGE
148J :	*.	JAX 216
148K		JAX 217
1481.		JAX 218
	•	JAX 219
		JAX 220
1480		JAX 221
		JAX 222
1480		JAX 223
148R	0	JAX 224
1488		JAX 225
148T	***************************************	JAX 226
		JAX 227
	6	JAX 228
		JAX 229
148X		JAX 230
		JAX 231
1487-1	, , ,	JAX 232
148Z-2		JAX 233
150A	8 .0	JAX 234
150B		JAX 235
154F		JAX 236
154G		JAX 237
155A	* 1.0	JAX 238
155B		
	<u>-11</u>	JAX 240

#### XXXVI

4		PA	GE
162		JAX	241
163A		JAX	242
163B		JAX	243
166	6	JAX	244
181B	6.	JAX	245
183A		JAX	246
183B		JAX	247
183C		JAX	248
183D		JAX	
183E		JAX	250
184A	4	JAX	251
184B		JAX	252
184C		JAX	
185A		JAX	
185B		JAX	
185C		JAX	
186A		JAX	
186B		JAX	
186C		JAX	*.
186E		JAX	
		JAX	
190		JAX	
		JAX	
204 A		JAX	
209A	***************************************	JAX	204

## XXXVII

204B		JAX 265
204C	- 5	JAX 266
204D		JAX 267
204E		JAX 268
204F	4.1.	JAX 269
205A		JAX 270
205B		JAX 271
205D		JAX 272
205E		JAX 273
206A		JAX 274
206B		JAX 275
206D	•	JAX 276
206E		JAX 277
207A		JAX 278
207B		JAX 279
207D		JAX 200
207E		JAX 281
208A		JAX 282
208B		JAX 283
208D		JAX 284
208E		JAX 285
213A		JAX 286
213B		JAX 287
215 .		JAX 288
216		JAX 289

#### XXXVIII

	PAGE
217	JAX 290
218	JAX 291
219	JAX 292
220A	JAX 293
220B	JAX 294
2200	JAX 295
221	JAX 296
222	JAX 297
223	JAX 298
226	JAX 299
230A	JAX 300
230B	JAX 301
230C-1	JAX 302
230C-2	JAX 303
**************************************	
230D-1	JAX 304
446	JAX 305
	JAX 306
213B-1	JAX 307
231B-2	JAX 308
231C	JAX 309
231D	JAX 310
231E-1	JAX 311
231E-2	JAX 312
231F-1'	
231F-2	JAX 314

## XXXIX

	PAGE
232A-1	JAX 315
232A-2	JAX 316
232B	JAX 317
233A	JAX 318
233B	JAX 319
233C	JAX 320
233D	JAX 321
234A	JAX 322
234B	JAX 323
2340-1	JAX 324
· 234C-2	JAX 325
234C-3	JAX 326
234D	JAX 327
234E-1	JAX 328
234E-2	JAX 329
234F	JAX 330
234H	JAX 331
234I-1	JAX 332
2341-2	JAX 333
234J	JAX 334
238A	JAX 835
238B	JAX 336
239A	JAX 337
239B	JAX 338
239C	JAX 339

		PAGE
239D		JAX 340
240A		JAX 341
240B	-t	JAX 342
240C		JAX 343
240D		JAX 344
240E	***************************************	JAX 345
240F		JAX 346
242A		JAX 347
242B		JAX 348
243		JAX 349
244		JAX 350
245		JAX 351
246		JAX 352
247	7	JAX 353
250		JAX 354
251,	•	JAX 355
252A		JAX 356
252B	1	JAX 357
253		JAX 358
254		JAX 359
255		JAX 360
256A.		JAX 361
256B		JAX 362
257		JAX 363

# Yolume IV

	PAGE
258	JAX 364
259	JAX 365
261	JAX 366
262	JAX 367
263A	JAX 368
263B	JAX 369
263C	JAX 370
263D	JAX 371
263E	JAX 372
263F	JAX 373
263G	JAX 374
263H	JAX 375
2631	JAX 376
263J	JAX 377
	JAX 378
263K	
263L	JAX 379
263M	JAX 380
263N	JAX 381
2630	JAX 382
263P	JAX 383
263Q,.	JAX 384
263R	JAX 385
263S	JAX 386
263T	JAX 387

		PAGE	•
	263U	JAX 388	
	263V	JAX 389	
2	263W	JAX 390	
	263X	JAX 391	,
	263Y	JAX 392	
	263Z-1	JAX 393	
	263Z-2 :	JAX 394	
	263Z-3	JAX 395	
	263Z-4	JAX 396	
	263Z-5	JAX 397	
	2637-6	JAX 398	
	263Z-7	JAX 399	
	263Z-8	JAX 400	
	263Z-9	JAX 401	
	263Z-10	JAX 402	
	263Z-11	JAX 403	
	2637-12	JAX 404	
	263Z-13	JAX 405	
	2637-14	JAX 406	
	263Z-15	JAX 407	0
	263Z-16	JAX 408	
,	263Z-17	JAX 409	
	263Z-18	JAX 410	
	263Z-19	JAX 411	
	263Z-20	JAX 412	

## Volumes IV and V

-		PAGE
263Z-21		- JAX 413
`263Z-22		JAX 414
263Z-23		JAX 415
264		JAX 416
267A		ĴAX 417
267B		JAX 418
2670	10	JAX 419
268G	· * · · · · · · · · · · · · · · · · · ·	JAX 420
269		JAX 421
270		JAX 422
	Volume V, RESPONDENTS' EXHIBITS	
2A	RESPONDENTS, EXHIBITS	JAX 423
2A 2B		JAX 423 JAX 424
2B	RESPONDENTS, EXHIBITS	
2B	RESPONDENTS, EXHIBITS	JAX 424
2B	RESPONDENTS, EXHIBITS	JAX 424 JAX 425
2B	RESPONDENTS, EXHIBITS	JAX 424 JAX 425 JAX 426
2B	RESPONDENTS, EXHIBITS	JAX 424 JAX 425 JAX 426 JAX 427
2B	RESPONDENTS, EXHIBITS	JAX 424 JAX 425 JAX 426 JAX 427 JAX 428
2B	RESPONDENTS, EXHIBITS	JAX 424 JAX 425 JAX 426 JAX 427 JAX 428 JAX 429
2B	RESPONDENTS, EXHIBITS	JAX 424 JAX 425 JAX 426 JAX 427 JAX 428 JAX 429 JAX 430

JAX 484

#### XLIV

		PAGE
	***************************************	JAX 435
	••••••	JAX 436
	*.	JAX 437
		JAX 438
		JAX 439
		JAX 440
	•	JAX 441
1		,
•		JAX 448
· · · · · · · · · · · · · · · · · · ·		JAX 445
	•••••	. /
	••••••••••••••••••••••••••••••••••••••	JAX 446
	••••••	JAX 447
		JAX 448
<u> </u>	••••••	JAX 449
		JAX 450
, ,	· · · · · · · · · · · · · · · · · · ·	
	••••	JAX 452
		JAX 453
	•••••••••••••••••••••••••••••••••••••••	JAX 454
	••••••	JAX 455
		JAX 456
		JAX 457
		JAX 458
	•••••	JAX 459
		-

## Folume F

1		· FAGE
26C		JAX 460
26D	*	JAX 461
26E		JAX 462
27A		JAX 463
27B		JAX 464
27C		JAX 465
27D		JAX 466
28A	<u> </u>	JAX 467
28B		JAX 468
28C		JAX 469
28D		JAX 470
28E		JAX 471
28F		JAX 472
29A	2	JAX 473
29B		JAX 474
29C		JAX 475
30A		JAX 476
30B		JAX 477
30C		JAX 478
31A		JAX 479
31B		JAX 480
31C		JAX 481
31D		JAX 482
31E		JAX 483
32 A		JAX 484

# ZLVI Volume V

		PAGE
32B	3 &	JAX 485
82C		JAX 486
37A-37C		JAX 487
37D-37F		JAX 488
37G		JAX 489
38A-38C		JAX 490
38D-38G	A	JAX 491
39		JAX 492
40-41		JAX 493
42A		JAX 494
42B-42D		JAX 495
43A	. 0	JAX 496
43B	•	JAX 497
43C		JAX 498
43D,	4	JAX 499
44		JAX 500
45A-45B	4	JAX 501
46A-46C		JAX 502
47A-47B		JAX 503
48A		JAX 504
48B		JAX 505
		JAX 506
		JAX 507
49B		JAX 508
		JAX 509

## XLVII

	ZAGE
51	. JAX 510
52	JAX 511
53	JAX 512
54	JAX 513
55	JAX 514
56A	JAX 515
56B	JAX 516
57A-57B	JAX 517
58	JAX 518
59	JAX 519
60	JAX 520
61	JAX 520
62	
	JAX 523
63B	. 01111 021
63C	
64A	
64B	JAX 527
640	JAX 528
65A-65B	JAX 529
66A	JAX 530
66B	JAX 531
66C	JAX 532
67	<b>JAX 533</b>
68A	JAX 534

#### XLVIII

	PAGE
68B	JAX 535
68C	JAX 536
69A	<b>JAX</b> 537
69B	JAX 538
70 <b>Å</b> -70B	JAX 539
71	JAX 540
72A	JAX 541
72B	JAX 542
73A	JAX 543
73B	JAX 544
73C	JAX 545
73D	JAX 546
74-1	JAX- 547
74-2	JAX 548
74-3	JAX 549
74-4	JAX 550
74-5	JAX 551
74-6	JAX 552
74-7	JAX 553
74-8	JAX 554
74-9	JAX 555
74-10	JAX 556
74-11	JAX 557
74-12	JAX 558
74-13	JAX 559

## x ří ž

## Yolume Y.

		2202
74-14		JAX 560
74-15		JAX 561
74-16		JAX 562
74-17		JAX 563
74-18	1	JAX 564
74-19		JAX 565
74-20		JAX 566
74-21		JAX 567
74-22		JAX 568
74-23		JAX 569
74-24		JAX 570
74-25		JAX 571
74-26		JAX -572
74-27	t.	JAX 573
74-28		JAX 574
74-29		JAX 575
74-30		JAX 576
74-31		JAX 577
74-32		JAX 578
74-33		JAX 579
74-34		JAX 580
74-35		JAX 581
74-36		JAX 582
74-37		JAX 583
74-38	A.I.	JAX 584

	Volume V	
		- PAGE
74-3	39	JAX 585
74	40	JAX 586
74.4	11	JAX 587
74-4	42	JAX 588
75		JAX 589
· 79A		
79B		JAX 591
790		
79D		
79E		
	0	JAX 594
80A		JAX 595
80B		JAX 596
800	* 0	JAX 597
80D	)	JAX 598
80E		JAX 599
81A		<b>JAX</b> 600
81B	ł	JAX 601
810	)	JAX 602
81D	)	JAX 603
81E	1	JAX 604
81F		JAX 605
81G		JAX 606
82 .		
83		
84A		
		VVV

		PAGE
84B		JAX 610
84C		JAX 611
84D		JAX 612
85A.		JAX 613
85B	· · · · · · · · · · · · · · · · · · ·	JAX 614
85C		JAX 615
86A		JAX 616
86B		JAX 617
86C		JAX 618
86D		JAX 619
86 <b>F</b>		JAX 620
86H		JAX 621
86I .		JAX 622
86J		JAX 628
86K		JAX 624
86L		JAX 625
86M		JAX 626
		JAX 627
89		JAX 628
90	······································	JAX 629
91		JAX 630
93A		JAX 631
93C		JAX 632
93G		JAX 633
93H	· · · · · · · · · · · · · · · · · · ·	JAX 634

	PAGE
97A	JAX 635
97B	JAX 636
97C	JAX 637
98	JAX 638
100	JAX 639
101A	JAX 640
101B	JAX 641
102A	JAX 642
102B	JAX 643
103-1	JAX 644
103-2	JAX 645
104-1	JAX 646
104-2	JAX 647
105	JAX 648
106	JAX 649
109A	JAX 650
109B	JAX 651
109C	JAX 652
109D	JAX 653
- 109E	JAX 654
109F	JAX 655
109G	JAX 656
109H	JAX 657
1091	TATE OF O
109J	JAX 659

(3412) BERNARD F. KOSSEK was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

#### Direct examination by Mr. Dias:

Q. Will you state your full name and business address, Mr. Kosseki A. Bernard F. Kossek, 1530—"N" Street, Lincoln, Nebraska.

Q. Will you state your place of employment? A. F. D.

Wilson Sales Company.

Q. How long have you been with F. T. Wilson? A. Since 1939.

Except for a period in the Armed Forces during the war.

- Q. What is your current position with the company?

  A. General Manager.
- Q. And how long have you held that position? A. About between three and four years.
- Q. Prior to that time? A. Prior to that I was Purchasing Agent and Office Manager.
- (3413) Q. What type business is F. T. Wilson in A. Wholesale of automotive parts, accessories, supplies and equipment.
  - Q. Do you handle tires? A. Yes, sir.
  - Q. And the brand name! A. Inland?
  - Q. Batteries! A. Delco.
- Q. Can you name some of the more popular accessories?

  A. We handle Champion spark plugs, Purolator filters,
  Sealed Pour Rings, Auto-Lite ignition, Carter carburetors
  —parts, of course, Prestone anti-freeze.
- Q. Do you handle repair parts? A. Repair parts, Sealed Power covers both parts and rings. I didn't specify. Both hard parts and rings.

- Q. How about items such as mufflers and shocks? A. AP mufflers. There are several lines.
- Q. What is the sales territory of your company? A. We cover the southeastern corner of Nebraska, roughly, 19 counties, and we cover from the Platte River—that is the Missouri River at the Platte—clear to highway 81, and south to the Kansas line, that section of the State.
  - Q. Do you employ salesmen? A. Yes.
  - (3414) Q. How many do you have! A. We have six.
- Q. What class sustomer do you sell to? A. Car dealers, service stations, garages, some fleet accounts, if there are any, implement dealers, and a few hardware and accessory stores in some of the smaller towns.
- Q. Among your service station customers are there any Texaco and Conoco stations? A. Yes, sir.
  - Q. Do you sell to any of them? A. Yes.
- Q. Do you have any idea of the number of Texaco stations you sell to? A. Well, I would say roughly between—around 50, probably. Scattered all around, 50, because of the number of little towns that are in the southeastern part of the State. That is rough. It could be a little bit more or a little bit less.
- Q. Do you know generally speaking the type product you sell to them? A. I think the main things we sell to them are our general supplies, mufflers, ignition parts, seat covers. And, of course, we sell a little spark plugs and maybe occasionally filters. We sell a little of those lines. The main things are made up of what I call miscellaneous supplies.
- (3415) Q. Do you have any figures showing sales to Texaco accounts? A. I have copied some down for 1955 and '56.

Q. Will you give them by name and address? A. I don't have them down, but I can give you the addresses as I run them off. I know the addresses.

These are all in Lincoln. These are Texaco stations.

Duane Ellison, at 17th and South. Do you want the

figures on each one as I give them?

Q. Yes. Do you have the figures broken down showing types of products purchased by the company? A. No. There is no way of breaking down individuals without going through a minute study of their invoices. Our records are kept as the accounts are posted, on a Cardex (3416) record, and we carry them by years and months on those, but it doesn't break down the individual purchases.

Mr. Lorenzen: Will you be giving them for two years?

The Witness: 1955 and '56.

Ellison bought \$2,500 in 1955; \$2,000 in 1956.

Then we have Larry O'Brien. He is at 10th and South.

The Witness: In 1955 he bought \$5,040. In 1956, \$6,400.

Then there is Watts Texaco, at 44th and "O." In 1955 he purchased \$130. In 1956, \$60.00.

Jerry Adams, 10th and R. He purchased \$140.00

in 1955; \$42.00 in 1956.

There is a Dick Brown, 53rd and "O." He was not in operation in 1955. I can't tell you. He opened up in 1956, sometime. He bought \$20.00 in the time of 1956 that he was open for business.

There was a Byam—B-y-a-m—at 48th and Calvert, (3417) I believe it is. He came into this station sometime in 1956. He purchased \$160.

Bob Martens, at 10th and "L." He bought \$1,800 in 1955. \$1440 in 1956.

There is Knudson. I believe there are two brothers but I don't have their names. They are at 40th and "A." Purchased \$650 in 1955; \$210 in 1956.

Legan—I don't know his first name—at 16th and "Q." \$100 in 1955: \$50.00 in 1956.

Jack Matthews, on North 48th, about the 2500 block. I can't give the cross street name. \$860 in 1955; \$850 in 1956.

There is a Heidtbrink. I don't know his first name. He is at 40th and South. He purchased \$160 in 1955 and \$150 in 1956.

Conover Texaco, at 63rd and Havelock Avenue. His purchases were \$25.00 in 1955, \$60.00 in 1956.

Kraft Service, roughly 900 North 16th. \$302 in 1955; \$706 in 1956.

There are several other Texaco service stations in town that we have never sold anything to so I didn't write them down.

#### By Mr. Dias:

- Q. That constitutes— A. That constitutes all that we have sold anything to in (3418) two years.
- Q. These plus the few you say that you— A. I would say there are two or three. I looked in the 'phone book and there are two or three names that we have never done any business with. I think they are fairly new stations, but I am not absolutely sure.
- Q. Does that constitute all the Texaco stations? A. That is all the Texaco stations that we do any business with here in the City.

#### (3420) By Mr. Dias:

- Q. Do you have some idea of the number of customers that (3421) you do business with? A. In our overall territory we must have in the neighborhood of 900 to a thousand accounts.
- Q. Of all types? A. Of all types. That is everything, small and large.
- Q. What do you consider as a small account? A. I am talking about a small account that may only buy maybe once a month. I would call a small account anything under \$100 a year a small account.

The \$900 and \$1000 includes every type account, including the small ones, and there are quite a few in these small towns.

- Q. Did you say that under \$100 a month— A. Under \$100 a year. A hundred dollars a month would be a pretty good account for a filling station. It wouldn't be an excellent account but it would be fairly good.
- Q. Can you state what these sales consist of generally? A. The general sales pattern is for these service stations to have mufflers, and where they have a mechanic, shock absorbers, ignition, any motor parts like even carburetor repairs where there is a mechanic. Some stations have none. And they will buy seat covers or some type of floor mats and maybe windshield wiper blades. I am trying to think of all the different miscellaneous things.
- Q. How about tires and batteries! (3422) A. Tires and batteries there probably are, out of the number I read you, there might be maybe four or five in there that have bought tires occasionally. But they buy them two at a time. This would indicate they were sold. They were not buying to stock. In other words, they were buying them on a hand to hand or mouth to mouth basis.

#### Bernard F. Kossek, for Commission-Cross

## Cross-examination by Mr. Barton:

- Q. That new remodeled station that was taken over by Whitney, you made approximately \$1,500 sales the first year he was in there! (3423) A. Whatever that figure was.
- Q. \$1,455? A. Whatever the figure was. That is what we sold. This man was very hot, though, on seat covers. He must have sold the type that you can put on yourself. He sold an awful lot of them last summer.
- Q. What kind of seat covers were those? A. They are what you call these turks and linen duster. He went very good on those. I don't know that he has a mechanic. I can't tell you. But that is one good item that they have sold. I would venture that he was our No. 1 account on that item.
  - Q. On seat covers? A. On seat covers.
- (3425) Q. Of those thousand accounts or so that you sell, how many of them are stocking Inland tires? A. It is hard to tell. I would say about maybe 30 to 35.
  - Q. Thirty or thirty-five? A. Yes.
- Q. By and large— A. We only took this—we have had them before but we only actually became actively pushing tires in the summer, just last year. In other words, those 35 have all been signed since the middle of this last year.
  - Q. 19561 A. 1956.
- Q. Prior to that time? A. Prior to that time we weren't on—there wasn't a proper cooperation, didn't have the proper setup to give us service or anything else so that we could afford to do any pushing. There was other merchandise that the salesmen could do better with.

### Bernard F. Kossek, for Commission-Cross

#### Cross-examination by Mr. Royall:

Q. Several of these stations buy Inland tires from Delco, do they not? (3426) A. Somewhat.

Q. Some of the Texas stations buy Delco and Inland tires? A. Probably there are several. There are probably several in both categories. I don't know about the Delco batteries so much. There are several I didn't specifically state. There were tires I was mentioning especially a minute ago.

Q. Maybe I can remind you of one or two of them. Don't you—isn't it a fact that Duane Ellison, you sell him Delco! A. If we do sell him Delco batteries it is very few.

I would doubt that he stocks that.

Q. How about Knudson? You are not certain about that? A. I am not absolutely sure. The majority of his purchases, which run a little over \$100 a month, he has a mechanic, and that stuff runs up. So that he couldn't put in many.

Q. He couldn't put many in there? A. He couldn't do

much selling of Delco batteries.

Q. How about Knudson? A. I don't think we selb him any batteries. In fact, I am sure of it.

Q. What do you sell him? A. All we sell him is supplies. He will buy—his last order I think he bought some Trico blades.

Q. He bought Prestone? A. He could have bought a case, but chances are only one (3427) case at a time. All these stations occasionally will pick up a case of Prestone. That is not all of them but some of them will pick up a case. But they would only buy a case at a time. I don't think you will ever find a station on the list that would buy more than a case.

Q. These figures that you gave, are there any sales that are not included for some reasons because they are cash sales? A. No. Cash sales in our method of handling them, all cash sales are also counted in as sales.

(3431) CLARENCE E. CORNELL was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

#### Direct examination by Mr. Boyd:

- Q. Mr. Cornell, please state your full name for the record. A. Clarence E. Cornell.
- Q. What is your present home address? A. 1710 South 48th Street, Lincoln, Nebraska.
- Q. Have you been in the service station business? A. Yes, I have.
- Q. And what gasoline did you sell, for what company?

  A. Continental Oil Company.
- Q. When did you enter the business—what was your business with Continental Oil Company? A. I was lessee of a company-owned—Continental Oil Company service station at 48 Randolph Street in Lincoln, Nebraska.

Q. When did you become a lessee of that station? A. October 30, 1951.

Q. And you conducted there until when? A. February 4, 1956.

(3432) Q. Do you have with you copies of your leases? A. Yes, I have.

Q. May we have them please?

Mr. Royall: Your Honor, we have a continuing objection to this.

Hearing Examiner Kolb: Yes.

Mr. Boyd: Your Honor, I ask there be marked for identification as Commission's exhibit—

Hearing Examiner Kolb: 150.

Mr. Boyd: (continuing)—150, a document entitled, "Service Station Lease," and it's on the form of the Continental Oil Company and it is made out to Clarence E. Cornell, and it is dated from the 30th day of October, 1951, to the 30th day of October, 1952. And since that has information on both sides, I guess we ought to make that 150-A and B.

Mr. Royall: What is the date of that?

Mr. Barton: What is the date of 150-A and B?

Mr. Boyd: It's a one-year lease from the 30th day of October, 1951, to the 30th day of October, 1952.

Mr. Barton: Is there a date on it other than that?

Mr. Boyd: That is the only date I see on it.

Mr. Barton: All right.

Mr. Boyd: And as Commission's Exhibit 151-A and B, another copy of a lease form entitled, "Service Station Lease, and it is on the form of the Continental Oil Company. (3433) It is dated the 29th day of October, 1952. That is written in in pen and ink, and down on the other part for the term of the lease, it indicates it is from the 30th day of October, 1952, to the 30th day of October, 1953.

And as Commission's Exhibit 152, a document entitled, "Mutual Cancellation of Service Station Lease," and it is dated February 4, 1956, and is a form of the Continental Oil Company, and it is properly executed by someone with that company. I can't make out the name, but anyway, it is the Assistant Division Manager; and the lessee's name is Clarence E. Cornell. It is also witnessed by, F. D. Severs I believe it is.

Your Honor, I ask that those be marked for identification.

Hearing Examiner Kolb: They may be so marked.

(The documents referred to were marked Commission's Exhibits 150-A and B, 151-A and B, and 152, for identification.)

Mr. Barton: Could I see them?

Mr. Boyd: Certainly.

#### By Mr. Boyd:

Q. Handing you, Mr. Cornell, Commission's Exhibits 150-A and B, 151-A and B, and 152, are these the documents, particularly the two leases, you operated under when you were a lessee of this station. They are only the two, the other is (3434) a copy of the termination agreement. A. Yes, sir.

Mr. Boyd: Your Honor, I ask that these documents be received in evidence.

Mr. Barton: I object, your Honor, on the ground that there is—with respect to Conoco, I assume that is within the Commission's ruling, but I think I should preserve my objection.

Mr. Royall: I renew my objection.

Hearing Examiner Kolb: Objection overruled.

The documents will be received in evidence as Commission's Exhibits 150-A and B, 151-A and B, and 152, subject to a motion to strike by Texas Company.

#### By Mr. Boyd:

Q. Mr. Cornell, with whom at the Continental Oil Company did you negotiate the lease, Commission's Exhibit 151-A and B? A. Floyd C. Severs.

Q. And what is his position? A. At that time he was known as the City Manager.

Q. Did anyone else take part in those negotiations with Conoco? A. I believe both times they were brought out to me already signed by the Assistant Division Manager, Mr. Hayes.

#### (3435) By Mr. Boyd:

- Q. With respect to the rental of the station on the first lease, how was that decided? A. I merely asked him what the rent was, and they said one cent a gallon. I accepted it on that basis. It was to be no bay rent or no set property rent. It was to be based on one cent a gallon of gasoline only. Then I asked them about future rentals, after the termination of the first lease. I was informed by the said Mr. Severs and Mr. Kiley Powell, who happened to be present, that there would be no increase in rent because it had been Conoco's policy over the past years not to increase rents. They had a policy not to increase rents and I had nothing to fear in the way of future rent increases.
- Q. Commission Exhibit 151, I believe, indicates that the rental was a cent and a fourth a gallon?

Mr. Barton: I object. Exhibits show what they show. I see no point in having counsel testify as to what the exhibit shows.

Hearing Examiner Kolb: There seems to be some discrepancy between his agreement and the lease.

Mr. Barton: No, your Honor. The exhibit itself shows that the rental is a cent and a quarter a. gallon.

#### By Mr. Boyd:

Q. Mr. Cornell, the first lease, which is Commission (3436) Exhibit 150, shows one cent a gallon rental, and you have testified about the assurance you received concerning no increase in rental. What circumstances occurred in connection with the increased rental which are reflected on Commission Exhibit 151?

Mr. Barton: Objection.

I object to the form of the question. It assumes there were some circumstances.

Hearing Examiner Kolb: The objection will be overruled.

A. As I remember, a few days before the first lease ran out, which would be in October 1952, a Conoco representative by the name of Eldon Jasa brought the second lease out for me to sign and it included this one fourth cent per gallon rent increase, which was a 25 percent increase in rent, and asked me to sign it for the ensuing year. I at first refused to do it and said that I had been assured that I wasn't going to have a future rental increase. They had told me that about a year before.

He said that he had no authority to argue over that phase of it. If I wanted the station I would have to sign the lease. And if I remember rightly, I waited a few days. And this also, if I remember rightly, Mr. Severs brought the lease out again and told me that they would have to have a cent and a quarter a gallon from now on because (3437) they had decided to raise rents on some of the newer stations in order to pay off some sort of investment that they had in them, and there was some discussion between he and myself, as I remember. I finally signed the lease in order to keep the station because, he gave me to understand, if I didn't sign the lease I would have to leave the station.

Q. When you became a Conoco lessee, did you stock and sell any tires, batteries, et cetera? A. Yes. I made a deal with the local distributor of U. S. Royal tires to take out a small stock of his tires and keep them in the station and display them and sell them as I could, which I did. I sold a few of those U. S. tires. And I took some Willard battery distributor and sold quite a few Willard batteries.

The rest of the line of TBA, general shelf items and chemicals and polishes and so forth, I bought from the

local jobbers in Lincoln.

Q. Did you continue to handle those brands, that is the Willard batteries and U. S. tires, thereafter? A. If I may

ask a question: thereafter, when?

- Q. When you first went into the station, when you originally opened? A. Well, I sold that line of merchandise and of course the shelf items and TBA items that I got from the local distributors, on through the first year of my tenure in the station. (3438) It was in the winter of 1952 and 1953 that I was told by Conoco that they were taking on the B. F. Goodrich line and I would be expected to sell it from then on, such as tires, batteries, and accessories.
- Q. What had your TBA volume been that first year, would you say, monthly or how ever you could give it to us? A. That was my first year in the station. I was building up a customer list and trying to get started. I imagine that I probably bought on the average around \$200 a month or more. That would just be a rough estimate. I kept no records on it.
- Q. Would you tell us from whom you purchased the Willard batteries? A. Judah Distributing Company.
- Q. That is in Lincoln? A. That is at 16th and "N" Streets, in Lincoln.
- Q. What about the—I believe you stated about U.S. tires? A. At that time the local distributor was Sidles U.S. Tires.

Q. What about your accessories? A. We have several parts and wholesale houses in Lincoln. Sidles Company, which is not exactly an affiliate of Sidles U. S. Tires; L. J. Messers, of the Wilson sales; Ben's Auto Parts, Carl A. Anderson, Inc. I bought from all of those people because they all sent salesmen out.

Q. You mentioned something about Goodrich and Conoco in (3439) late 1952. Did you take on the Goodrich line then? A. Yes, I took it on. I signed a Goodrich dealer agreement. They said that they wanted us all to sell Goodrich tires and batteries and accessories. I was a little slow there in signing up. I guess it was probably a month or so after the rest of them did.

Q. When you say "they wanted" you to, who do you mean? A. Continental Oil Company local officials.

Q. Tell us who these people are as you name them? A. Floyd Severs, Harold Hays, W. R. Fitzpatrick, and the city salesman who at that time was Duane Nantkes.

Q. And then did they indicate what items you were to carry? A. They indicated I was to carry the Goodrich line of tires, batteries and accessories, which includes shelf items and various chemicals and polishes, items that are listed in the Goodrich book, Goodrich sales and service book. And also indicated that I was to do away with the items that were not listed in that book.

Q. Was anything said by the Conoco people about the Willard batteries or U. S. tires?

Mr. Barton: Object as leading. Hearing Examiner Kolb: Overruled.

A. Concerning the tires, I have put them around, that is, to satisfy the Conoco people, I put them around in the back room of the station up on a shelf, and tried to sell them, (3440) and displayed the Goodrich tires out front.

However, I left the Willard batteries right out front. I didn't take on the B. F. Goodrich batteries for quite awhile. Finally, I suppose it must have been a couple of months later, I took on a line of B. F. Goodrich batteries after much salesmanship and pressure from Conoco people.

I never did receive any pressure from Goodrich over it.

Q. Tell me about this pressure from Conoco that you mentioned. Just what happened? A. Well, when they would come out and see that I still had Willard batteries they would say that I was expected to throw those Willard batteries out and put in the Goodrich batteries. And so finally when I put in the Goodrich batteries I put them on one side of the room and had the Willard batteries on the other side of the room and that still didn't satisfy them.

Q. What happened? A. He kept asking me-

Q. Who! A. Loyal Severs and Harold Hays kept asking when I was going to throw out those Willard batteries and I told them I wasn't going to throw them out, I was going to keep them both. They said that they didn't make any money on Willard batteries and I wasn't supposed to keep them. And I said that I did make money on the batteries and I was going to keep them, (3441) that I would sell theirs alongside of them.

Q. Did you continue to handle the Willard batteries? A. I did for another month or so, and then finally I got rid of them. They kept wanting to take the Willard battery stand out and have it painted for me. They wanted to paint Goodrich on my Willard battery sign.

- Q. Mr. Hays that you mentioned, do you know what his position is? A. Assistant division manager for the State of Nebraska.
  - Q. Continental Oil? A. Continental Oil.
- Q. You mentioned putting the tires in the back. That was U. S. tires? A. That is right. I sold them down as much as I could.

Q. Did they request that? A. Well they requested generally that we sell or dispose otherwise of all of the TBA items that were not listed in the Goodrich TBA book, and get them out of the station as fast as we could. That also was to include shelf items such as unsponsored polish and unsponsored radiator chemicals and unsponsored fan belts and radiator hoses.

In the case of the fan belts, they sent out jackets, B. F. Goodrich jackets, and put them over the Gates fan belts that I had on display. And they brought out a Goodrich placard that fitted on to the Gates display stand. (3442) They had me put that on the Gates display stand. Then we covered up these Gates fan belts with B. F. Goodrich labels. And as we sold those down, we gradually replaced the fan belts with B. F. Goodrich fan belts.

Q. After you started handling the Goodrich line where did you obtain your supplies? A. At first we obtained what we could from the B. F. Goodrich store, 17th and O, at Lincoln, although they didn't carry the whole line. I can't recall just exactly how long that went on, probably five or six months.

Q. How did you happen to go to that B. F. Goodrich store! A. We were told to.

Q. By whom? A: Continental Oil Company officials.

Q. Name them again. A. W. R. Fitzpatrick-

Mr. Barton: I think that is in the record. Mr. Boyd: I don't think Mr. Fitzpatrick is.

#### By Mr. Boyd:

Q. Who is het A. He was the division manager for Continental Oil Company for four states.

Q. Do you know what those four states were! A. Nebraska, Iowa, North and South Dakota.

- Q. For four months bought from the B. F. Goodrich store? (3443) A. That is, the articles we can obtain. They didn't carry the recommended oil filters. They didn't carry the fan belts or the radiator hose there because he didn't do that kind of work.
- Q. This is a B. F. Goodrich store? A. Retail store; yes, sir.
- Q. When did you get another source of supply? A. After that the Conoco and Goodrich people got together with Mr. Chris Beck and he was carrying Firestone products and Phillips petroleum, and they had him change over to Continental Oil Company petroleum products and B. F. Goodrich TBA. They set him up as a supplier and wholesale outlet. We were told to buy there and stay away from the store.
- Q. How long did Chris Beck continue to be the supply source? A. He still is.
- Q. After you took on the Goodrich line, was the station then identified with Goodrich products? A. Yes. The Goodrich people have a sign van that puts up metal signs on the lamps posts, and decal signs on all the windows.
- Q. Were you asked where you wanted those signs? A. No.
- Q. After you had your station identified with Goodrich signs and so forth, did you ever put up any other signs of other products that you didn't buy from Goodrich! (3444) A. From time to time I believe we would buy some oil additives, such as Rislone or Casite. They would probably be in a small display rack with a sign on them. Or if we had some Prestone or Zerex anti-freeze we would put that up in the window, and of course Conoco made us take those down.
- Q. Who in Conoco? A. Harold W. Hays, Loyd Severs, Duane Nantkes.

Q. You say they made you take them down? How did they go about that? A. Of course they didn't use physical force but they would just keep telling us that the company didn't want those signs up, that it was the company policy not to have the signs up and we were expected to take them down if we wanted to get along with the company.

Q. In addition to tires, batteries and accessories, did you buy any other items from the Goodrich store—from Chris Beck? A. Of course the term "TBA" is a rather broad term—tires, batteries and accessories. Accessories in service station language are construed as fan belts, radiator hoses, shelf items such as polish, that is recommended polish, radiator chemicals, radiator additives. I think they had one or two lines of oil additives. They had light bulbs, sealed beams, small daylight bulbs, fuses, and just generally small shelf item products. Wiper blades, things of that sort, general (3445) car needs.

Q. Do you know what traffic builders are! A. Yes, sir, I know what traffic builders are.

Q. What are they? A. They are usually something that is put into a store or a station and then highly advertised in conjunction with an advertising program to bring people into the store or the station as it were. In our experience they have been seat cushions, low-priced floor mats, charcoal burners, picnic bags. I think they had ice pails, things of that sort. They were usually an item that we would buy for say 93 cents and sell for 98 cents.

Q. Did you sell those items? A. I sold quite a few of them. I think the last year I was in the station I refused to take them.

Q. From whom did you obtain them? A. We would get them from Goodrich through Chris Beck. But it was usually in conjunction with an advertising program where they were flyleafs, leaflets made up, or handbills to be distributed to customers in the neighborhood.

Q. By whom were these handbills, this advertising program— A. They would be printed up by some jobbing firm. I have no idea who. But they would be gotten by Goodrich and they would jointly carry Goodrich and Conoco items. We had to pay for the whole program.

(3446) Q. They did feature Conoco petroleum products? A. They featured Conoco petroleum products and usually mentioned washing and greasing, and then they would mention tires and batteries, and the various items

we carried in the station.

Q. Did you ever have any discussions with representatives of Conoco about these traffic builders? A. Yes. The discussion would be along the lines that they were extremely hard to sell and hard to get rid of, and at the end of a given season we would find ourselves with quite a number of them still on hand that we would try to give away. We couldn't get rid of them any other way. We couldn't make any money on them.

Q. Did representatives of Conoco urge you to buy these items? A. Yes, they did. Very much. They urged us to buy those items. And at one time when I had fully made up my mind to refuse, there was a Conoco city salesman at that time named Rihn, and he said, "I want you to sign up for this advertising program or else." That is right after the half-dozenth time that I had refused him.

He said, "This is it. This is the last time I am going to ask you. Will you sign it or shall we go down and see Fitzpatrick." So I signed it.

- Q. Do we have his full name? (3447) A. I believe it is Erwin, his first name.
- Q. What is his position? A. He is merchandising manager. There was quite a shake-up there. They changed around a number of positions. There are no city sales manager anymore. The merchandise manager took his place.

- Q. Merchandise manager for whom? A. Continental Oil Company. Locally.
  - Q. Do you know Mr. O. F. Splichal? A. Yes, I do.
- Q. Who is he? A. He was assistant division manager for Continental Oil Company in charge of TBA for the four-state area that I have previously mentioned.
- Q. Did you ever have discussions with him about TBA? A. Quite a number of times. He would accompany the Goodrich representative out to the station to see us about buying more TBA. At one time in particular he came out to see me when the Conoco salesman—
- Q. Who is he? A. I think there were two in this particular case that I want to recite. It was Nantkes at Firestone and then Severs-told us that we were expected to put in 25 dry-charge batteries because I still had a half dozen wet batteries on hand and I told them that I was going to buy dry-charge batteries (3448) when I sold these wet batteries and got rid of them. And they kept after me to buy 25 dry-charge batteries and they couldn't get me sold. Finally, Splichal came out himself. He had the order-all made out and told me to sign it. I refused to sign it. He said, "All the others are signing up for 25 dry-charge batteries and you are no exception." I told him I didn't need 25 dry-charge batteries because I had an adequate supply of batteries on hand and when I sold them out I would buy dry-charge batteries because I was in favor of that program but I wouldn't buy 25.
- Q. What kind of batteries he wanted you to buy? The brand? A. The B. F. Goodrich dry-charge batteries.
- Q. As best you can tell us, about when did that occur? A. If I recall, that must have been in the early spring of 1954.
- Q. Was it about the time that these dry-charge batteries came on the market? A. Yes, about the time that these dry-charge batteries came on the market. There was quite

a program on to get everyone to take 25 batteries, among the smaller stations.

Q. Did you attend any dealers meetings, Mr. Cornell? A. Yes, sir, I attended all the dealers meetings.

Q. Were there any Goodrich representatives at those meetings? A. There were usually one or two Goodrich representatives (3449) at every Conoco meeting. That is after the Conoco-Goodrich alliance.

Q. Were there any other rubber company representatives at such meetings? A. None.

O. Were there any discussions at the meetings about Goodrich products? A. There were usually discussions at the meetings about Goodrich products and how to sell TBA. I remember one particular meeting, one meeting in particular. Quite a large crowd attended and about the only meeting that I ever saw Mr. Fitzpatrick attend. He was there and asked for floor time. He got up and really started to give everybody a dressing down because they hadn't been loyal to Goodrich; they hadn't been loyal to Conoco. He stated that he as division manager was very much interested in the company making money, and the stockholders making money. He said that Conoco had quite a number of stockholders and that he considered stockholders the best friends that the company had, and that they were making a lousy five percent on their money, and the reason they weren't making any more was because us lessees were not loval to the TBA program and were not buying all the TBA that we sold from the B. F. Goodrich outlets.

We were buying from other places in town that the company wasn't making any money on. He also stated that we (3450) were expected to deal exclusively with B. F. Goodrich outlets and that the trouble with most of us was that we were too intent upon making money for ourselves and not making any money for the company.

He said that if we would set our minds toward making money for the company, that we were bound to make money ourselves.

He also said that we were letting too many bastards—and he used this word "bastard" a number of times—there were too many bastards from "O" street that were coming in through our doors and selling us TBA merchandise, and from now on he expected absolute loyalty from the lessees in the Lincoln area, and to keep the bastards from "O" Street out of the stations, and to buy any TBA that we needed from the local B. F. Goodrich outlets. At that same meeting—

(3451) Q. Could you tell us about when that meeting was, as best you recall it? A. As best I recall that was

in the early part of 1954.

Q. Go ahead. Can you tell us something else about that meeting? A. He kept his eyes on me in particular. I will never forget that as long as I live. He kept his eyes on me in particular and said that in his experience he has seen quite a number of petroleum retailers associations spring up, and that usually the man who started them found himself out of business, out of money, broke, and the friends that he thought were following him were really not following him after all; that he was usually some kind of a flag waver who would walk up and down the street carrying a flag over his shoulder and expect all the other area service men to follow him, and in reality the other service station men would see the light of day and follow the company policy.

He had seen these retailers' associations spring up all over the United States and he hadn't seen one of them that really had been successful yet, and he said the one that was getting locally started here in Lincoln would be no exception, and that the people who were getting it started

would soon find out their folly and would be coming back and wanting to get in and be a member of the team and follow the Conoco program.

(3452) That any one who joined the retailers' association was wasting his time, wasting his money, when he could be spending his time better selling the company's products through the station and not spending so much time trying to organize a petroleum retailers' association.

And he—I forget the words he used—but he labeled it

a communist front.

Q. Is there a retail gasoline dealers association in Lincoln! A. There is a retail gasoline dealers association yet in Lincoln, but the ranks have dwindled due to oil company pressure.

Q. When did it come into existence? That is, this association? A. In the latter part of 1952, toward the fall. Myself and about 7 or 8 other fellows from as many different brand names of gasoline got together and formed the Lincoln Petroleum Retailers Association.

Q. You said something about being a member of the Conoco team. Did a representative of Conoco ever discuss

that with you? A. Yes, sir.

Q. What did they say! A. Being a member of a teamwas to, of course, deal exclusively in Conoco products, deal exclusively in B. F. (3453) Goodrich products, also being a member of the team meant to keep your station

open later than you usually had been.

They recommended keeping the stations open until 11:00 o'clock. And there were quite a number of boys closed at 9:00 or 10:00. Being a member of the team also meant that when there was a gasoline war started you were expected to go down immediately to the recommended price because there was usually some discussion by 'phone or somebody would come around in a car and say, "there is a gas war on, the price is 24.4, you are supposed to go down to

it." And they would even get signs painted up for us to put on our driveway.

Q. Who would? A. Continental Oil Company. Just generally following company directives meant being a member of the team.

Q. Did you receive that information from a represen-

tative of Conoco? A. That's right.

Q. One other question about the dealer meetings. How often were they held? A. They were supposed to be held every three months, but sometimes they skipped and we didn't have one for various reasons. I don't know why.

Q. Before Conoco took on the Goodrich line of TBA, featuring it at the stations, did they ever say anything to you about TBA? (3454) A. It was never mentioned. They would say this: That you shouldn't tie up all your money in tires and batteries. Don't spend too much money

on it. Don't get yourself in a hole financially.

Q. Did the Conoco Oil Company have a credit card while you were lessee? A. When I first went into the Conoco station, the first lease of the Conoco station, they had a regular credit card which was similar to every other oil company credit card that I had ever seen, and I believe it was in 1953 that they changed to the International Business Machine credit checkbook system, and tried to get as many of the customers as possible to change to using that system. It was a very highly successful system and it is very convenient.

Q. Did the credit cards—excuse me. What date did they they change from the credit card to the other system? A. I think it was in the early part of 1953. The spring of 1953 if I remember rightly.

I think it was 1953.

Mr. Boyd: Your Honor, I ask that there be marked for identification as Commission Exhibit 153

a card entitled "Your personalized Conoco Credit checkbook." On the top line it has the name "Clarence Cornell." This is a perforated card. Since there is information on both sides we had better make it 153-A and B.

(3455) (The document referred to was marked Commission's Exhibit 153-A and B for identification.)

#### By Mr. Boyd:

Q. Mr. Cornell, handing you what has been marked for identification as Commission's Exhibit 153-A and B, is that one of the tickets from the new credit system that was adopted about 1953 that you told us about? A. No, that is not one of the tickets. That is not one of the usable tickets. That is the flyleaf that is in the front of each new book that the customer gets which describes the purpose of this credit checkbook, what it is used for, and mentioning the articles of various kinds that can be purchased with it.

Of course, it carries the customer's name and address. I imagine the perforation is for his identification in the machine.

Mr. Boyd: Your Honor, I offer in evidence Commission's Exhibit 153-A and B.

Mr. Barton: I have the same objection to that.

Mr. Royall: I understand our objection covers it, your Honor:

Hearing Examiner Kolb: The objection by both parties will be overruled, subject to motion to strike on the part of Texas.

(3456) (The document referred to, heretofore marked Commission's Exhibit 153-A and B for identification, was received in evidence.)

#### By Mr. Boyd:

Q. I hand you Commission's Exhibit 153-A and B and referring to the portion marked 153-B, I note that it states that it can be used to purchase Goodrich tires, batteries and so forth, A. That's right.

Q. Have those forms ever carried any other rubber company's designated TBA? In other words, would they be good for goods of that type? A. I never heard they did, and I heard we were not supposed to put any other brand name of tire, battery or accessory other than Goodrich sponsored on the credit checkbook.

I won't say for sure that we always followed that policy.

Q. How long did you continue to carry the Goodrich TBA line after you took it on? A. I carried the Goodrich TBA line right on through until the time that I was ejected from the station.

Q. Mr. Cornell, in addition to the TBA line, did you carry any other, say, outside or unsponsored items? TBA items that you did not obtain from the designated— A. Yes, I carried some oil additives that were not sponsored by Conoco or Goodrich, and carried some motor oils not sponsored (3457) by Conoco and you might say Goodrich. Do you want to know the names of them?

Q. Yes, sir. A. I carried Rislone, an oil additive. I carried the Alemite Company CD-2. And I carried Wynns friction proofing. I carried Miracle Power. There might have been another or two. I can't remember now. I carried Quaker State oil. I carried some Pennzoil. I carried some Royal Triton oil.

Q. Let's take Rislone. Did you openly display that in the station? A. Yes, I did.

Q. Was anything said about it? A. Quite a lot.

Q. By whom? A. Floyd Severs, Harold Hayes, W. R. Fitzpatrick.

Q. What did they say? A. Well, they said that I would get in trouble if I carried it because they didn't sponsor it. They didn't sell it and they didn't make any money on it. Also, it was a bad thing to sell to your customers because they had known it to ruin people's engines, and it was nothing but kerosene anyhow and it thinned out a perfectly good Conoco motor oil.

Q. What about CD-2, Wynns friction proofing? A. They said if you used Continental Oil Company's oil exclusively you would never need it. No sense in selling it.

(3458) Q. Did you display those items? A. I did. I displayed them quite a lot until there were so many objections raised to it that I finally had to put them around in the back room and put them in Continental Oil Company oil boxes to hide them.

Q. Is that the basis on which you continued to sell them?

A. Yes. Once in awhile I would bring them around and put them on the shelf or maybe on one of the shelves in the back room and then some Continental Oil Company official would make quite an objection to it and I would put them back in a Continental Oil Company box again.

Of course, they wanted to throw them clear out, to get them out of there.

Q. Would that same be true of the other items, Miracle Power, Quaker State, Penzoil and Royal Triton? A. Quaker State raised quite a bone of contention.

Q. Tell us about it. A. Quaker State oil was not supposed to be on the station in any form, either hidden or otherwise. You were supposed to keep it completely off the premises, because we were supposed to sell Conoco and no other oil. In fact, I even hid a case of Quaker State in the trunk of my car, and one Conoco man opened the trunk of my car and found it.

Q. What did he do when he found it? A. Oh, he just made a little remark about it. "I see you (3459) are still selling Quaker State," and that is all he said.

Q. How about Pennzoil and Royal Triton? A. Royal Triton oil at that time was desired by a number of Buick owners because it made their engine run smoother, they claimed. They had a hydraulic valve lifter trouble and Royal Triton was supposed to help that. We had a number of Buick owners who asked for it. Demanded it, and said that we would get all of their lubrication and gasoline business if we would carry it, and so I did.

But when Conoco would see it on the shelf they would order us to throw it out or hide it. Sometimes they said to hide it and sometimes they would get a little angry and say to throw it out. One particular time I had in on my front shelf. That was after they raised my rent. When they raised the rent, after they promised me they would never raise the rent, then I went around to the back room and got all the Royal Triton, all the Quaker State, Rislone and Casite, brought it along and put it on the front shelf where everybody could see it.

That is when they physically moved it. They took it into their own hands and took it off the shelf and through it in a pile in the back room.

- Q. Who did this? A. Elvin Jasa.
- Q. Who is he again? (3460) A. He was at that time the City Salesman.
  - Q. Conoco! A. For Conoco.
- Q. Did you ever give trading stamps? A. We gave trading stamps from I think it was about April, 1953, until August 1954.
- Q. How did you come to give those out? A. We were told that we had to give stamps after Continental Oil Company made some sort of agreement with the local Company made.

munity Stamp Company that started up in Lincoln. It was a local concern that produced community savings stamps. And Conoco began sponsoring these stamps and they held several meetings with the dealers over it. Of course, the stamp officials were there and told us how we would have quite a competitive advantage over other name brands in petroleum, and other stations, because we would be the only station that would be handling or giving, I should say, the community stamps.

There were quite a number of the lessees that I had talked to who were skeptical about the whole thing and didn't want to take on the stamps. But Conoco said that we all had to take on the stamps because they wanted to keep all of our stations uniform and they wanted all Conoco customers to be able to get community stamps at any Conoco station that they went to. And that we must

give the community savings stamps.

Q. Did you take them on against your wishes! (3461)
A. To be truthful, I was more or less passive. I took a wait and see attitude. And I took them on: I didn't offer too much resistance to them at all. I took them on to see if I could gain some competitive advantage. But when I woke up one morning and found the man across the street in a Sinclair station had the same stamps. And as I rode around from time to time every station had the same stamps except the ones who were giving the S & H green stamps.

This included Standard stations and some Texaco stations and the Phillips stations and the Skelly and Jacobs service and all the other name brands around Lincoln were giving savings stamps, so I couldn't see any competitive

Q. Were they given on everything you sold? A. We were told to give it on everything we sold by both the stamp company and Continental.

Q. Did that include TBA items? A. That included TBA items.

Q. What was the reason you signed that cancellation agreement and gave up the station? A. The reason I signed the cancellation agreement was because that I knew and was advised by my attorney that they could go to court and get me out anyhow.

The way it came about—do you want to know how it-

came about?

(3462) Q. Yes, sir. A. On September 30, 1955, I was making preparation to take about a ten-day vacation. I went over to the warehouse to buy some oil for the station to keep on hand. My brother-in-law was going to run the station for me and I had him with me. So as I was at the station one of the men there said, "Don't leave because Rihn is looking for you and wants to see you as soon as he can. He is running all over town looking for you.

"The first time he comes in I will tell him you are here."

I waited about ten minutes. He called me off into his car, in another part of the lot, and told me that he wanted me to sign a mutual cancellation agreement.

Q. He is the salesman for Conoco? A. He was the

merchandise manager in charge of all the stations.

Q: Go ahead. A. I asked him why I should sign the cancellation agreement. He said there is no particular reason, just the fact that Conoco wants its station back and they want me out of it and I was to sign this cancellation agreement. I told him I was making preparation to go on a trip and I wasn't about to sign anything without the advice of an attorney, and I didn't have a chance to get in touch with an attorney then, and I was still going to take the trip and I wasn't going to (3463) sign.

Q. That was about 30 September 1955? A. That was

the September 30, 1955.

Q. Then what happened? A. I went back to the station and told my brother-in-law to run it, that I was going to take a trip. I found out about, I guess it was 9:00 o'clock that night, after I had left the station, I left the station about 5:00 o'clock in the afternoon, that there was a special delivery letter came to the station and my help had received it.

I said I am not coming up there to read that letter. I want no part of it. I got in the car and we started on the

trip.

When I got back, about ten days later, then I read the letter. It was a letter cancelling any lease agreement, that then existed between Continental Oil Company and myself, and asking that I vacate the station within 30 days from September 30, which would be October 30.

When October 30 came, I just stayed. I didn't go anywhere. Then they served me with a—the Marshall served me with an eviction notice on October 30, giving me another 30 days to get out of the station. I was supposed to be out by November 30 then. So I still didn't go. I stayed

right there. And-

Q. What happened after that! (3464) A. After that I was served again by a Marshall to appear in Municipal Court to answer charges as to why I was unlawfully occupying their premises without any legal right to be there, I guess. And so at that time my attorney went down to the court—I didn't even go—he went down to the court and just filed an answer to the charges and asked for a continuation. And so they couldn't get a trial date until January 24th, and I was supposed to be in Municipal Court on January 24, 1956, and we were all set to go to court that day and the day before, which was January 23, Loyd Severs and Irvin Rhin came out with what I call a watered down version of, the cancellation agreement, and had me sign it.

The reason I didn't sign the original cancellation agreement was because my attorney had advised me that there was to be a clause in that cancellation agreement which said that I would never be able to act as a witness against Continental Oil Company in court, and that it would also state that they did not evict me from the station; that I asked to go of my own free will and accord.

He advised me that there would be a clause in there of

that sort, and that is why I didn't sign it.

So when they finally gave me a cancellation agreement that had nothing of that sort in it, then I signed it. And they asked me if I would stay there for a week or ten days until they could find someone to buy the merchandise.

(3465) Up until this time they had refused to buy back any TBA or anything in the way of tools or equipment. They even refused to buy back the Continental Oil Company gasoline and oil that I had on hand, and I was supposed to dispose of it of my own volition. That is because I wouldn't sign the cancellation agreement that they had refused to buy back their own products.

So when I started to sell the stuff to other dealers we created a little furore and they came around and wanted

to buy then.

(3466) Q. Mr. Cornell, did the TBA matter have anything to do with your lease cancellation?

Mr. Barton: I object.

Hearing Examiner Kolb: Objection overruled.

A. I believe it was relevant to this extent: that I had refused to sell the B. F. Goodrich-sponsored TBA entirely, and no other. I insisted on keeping some—I had somebody else's radiator hose, I think it was Thermoid's. And I didn't buy all of my filters from Goodrich. I had a few AC's on the shelf. And then when I didn't get quite the deal I wanted from the Goodrich outlet, which was Beck,

I bought the same brand filter, Fram, from Sidles Company. And of course they knew that I had always had an account at Sidles and Messers and Ben's Auto Parts and various wholesale houses. That part of it I believe is relevant as togthe TBA part of it.

There were other reasons. The main reason I was thrown out of the station was because I refused to give the stamps. I threw out the stamps in 1954. The other reason was the fact that I was the first president of the Lincoln Retailers Association and was very instrumental in getting it organized. They told me that, that they would get me for starting an association.

W. R. Fitzpatrick made the statement that he would get me for starting the Association. I will swear to (3467) that.

#### By Mr. Boyd:

Q. This station that you operated, had anybody been in that station before you had it? A. No, sir. I was the first lessee. I opened it brand new.

Q. You said you carried some unsponsored items that you mentioned just a few moments ago. Did representatives of Conoco indicate that that was one of the reasons?

Mr. Barton: I object to that, your Honor. The witness has been very able to express himself on every possible subject and needs no leading from counsel.

Hearing Examiner Kolb: Read the question.

(Question read.)

Hearing Examiner Kolb: Objection sustained.

# By Mr. Boyd:

Q. What reasons were given you by representatives of the Conoco Oil Company about the lease cancellation?

Mr. Barton: Object.

Hearing Examiner Kolb: The objection will be overruled.

A. Did you mean, sir, when the lease was not renewed in 1953, or when I was—

Q. Is that when it first came up for renewal? In other words, at the end of the second year? (3468) A. Yes, sir. October 1953 was when that lease would come up for "renewal—and I have had two leases. I didn't get a lease at all. They just didn't bring one out and I wondered where it was. I asked Severs where it was and I asked Rihn where it was, and I asked Hays where it was, and I got no answer; none. I kept asking for a period of about two months when I was going to get a lease. Nobody would answer the question.

So when you could get one of those fellows by themselves, either one of the three—Severs, Rihn or Hayes they would make this statement: that whenever you become a member of the Conoco team, when you decide to straighten up and fly right, you might get a lease.

Q. Then on September 30, 1955, when you were approached about vacating the station by signing this cancellation agreement, what reasons were given then?

Mr. Barton: If any.

#### By Mr. Boyd:

Q. If any. A. Simply that they had put up with me long enough, they were sick and tired of trying to make me become a member of the team, that I knew very well

# Clarence E. Cornell, for Commission-Cross

why they wanted me out of there. Why should I ask them again and they wanted their property back under the law. All of those things were verbal. There is nothing written.

(3469) Mr. Boyd: That concludes the direct. Mr. Boyall: I have no questions, your Honor.

# Cross-examination by Mr. Barton:

Q. You did very well in your sale of Goodrich TBA in the station, did you not? A. I would say that I did average; yes, sir.

Q. You sold several thousand dollars of tires, batteries

and accessories? A. Over what period?

Q. Over an annual period, annually. A. Yes, I would say that I probably sold several thousand dollars over an annual period.

Q. That is each year that you were handling them? A.

Yes.

Q. And you were very well satisfied with the B. F. Goodrich brand of tires and batteries, weren't you? A. As quality merchandise: yes, sir.

Q. I mean you expressed to your customers and to others your satisfaction with the B. F. Goodrich line during the time you were in the station? A. If you know anything about salesmanship at all, if you want to sell something you have to necessarily believe in it.

Q. That is right, and you believe in it? A. That is

right.

(3470) Q. And the traffic builders that were utilized by you were used in connection with the direct mail program, were they not? A. That is true.

Q. And the system was that you would mail, or you would buy from the B. F. Goodrich distributor or the company, a direct mail program which would be a postcard with Conoco products, your products, your name on that card? A: That is right.

# Clarence E. Cornell, for Commission-Cross

Q. And it would be mailed to your customers? A. Yes.

Q. Or prospective customers? A. Both.

- Q. The idea of it was to get more traffic into your station so that they would buy more gasoline and more TEA! A. That is true.
- Q. And the traffic builder was thought to be a means to get the customers to come in? A. That is true.

Q. Some of them worked and some didn't? -A. Most of them didn't.

- Q. In your case most of them didn't? A. Well, in most all cases most of them didn't.
- Q. Did you have a charcoal burner A. No, I didn't take that.
- (3471) Q. Did you ever have any argument with any of your customers? A. Over what, sir?

Q. Anything.

Mr. Boyd: I object to that as being immaterial and irrelevant and not part of the direct examination.

Mr. Barton: Your Honor, the direct has covered an awfully broad field.

Hearing Examiner Kolb: The objection will be overruled.

A. I can't remember ever having a real argument with any customer.

#### By Mr. Barton:

- Q. What do you mean by "real argument"? A. Well, you haven't told me yet what sort of argument I am having here with a customer. I don't quite understand.
- Q. Did you ever have a disagreement with a customer in which you expressed yourself about the matter? A. About any matter?

# Clarence E. Cornell, for Commission-Cross

- Q. Yes. A. Or a particular matter.
- Q. Any matter? A. I can't recall.
- Q. You reserved all those for your confreres in the Conoco Company, I take it? (3472) A. I never started an argument with them, sir.
- Q. Not even when they raised your rent by a quarter of a cent? A. Wouldn't it be a natural thing to protest?
- Q. You didn't argue with them about that? A. I certainly did.
- Q. And during the time that you were there isn't it a fact that the Conoco officials told you that they didn't think you were selling the amount of gasoline in that station that you should sell! A. They tell that to all their—
  - 'Q, Didn't tell you that? A. They certainly did.
- Q. They told you that consistently while you were there! A. Yes, and all the others.
- Q. You had a running argument with them during the time you were there, about your gallonage? A. Do you think my sales were any part of their business?

Q. Didn't you have that kind of argument with them?

A. I certainly did.

Q. You went to Washington and saw Mr. Roosevelt about the Conoco Company! A. I never saw Mr. Roosevelt in my life.

Q. Didn't you see James Roosevelt! A. No, sir.

(3473) Q. Didn't you come back to Omaha and tell everybody that you did see him there? A. No, sir, I did not.

Mr. Boyd: Objection.

# By Mr. Barton:

Q. Didn't you talk around Omaha that you were going to "get the Conoco Company?"

# Clarence E. Cornell, for Commission—Cross

Mr. Boyd: Objection.

A. No, sir.

#### By Mr. Barton:

Q. You never said that? A. No, sir.

Hearing Examiner Kolb: Objection overruled.

# By Mr. Barton:

Q. When did the Conoco Company hand you a cancellation agreement that had a clause in it that you were not to be a witness? A. They never did.

Q. They never did! A. They wouldn't show me the cancellation agreement that I was supposed to sign until

I had made up my mind to sign it.

Q. But you know they had a cancellation agreement with such a clause in it? A. I am not 100 percent certain but I am advised that there is such a sort of thing, by my attorney.

Q. When did you form this association (3474) A. A better way to state it would be when did we form that Association. That was in the say we got started in the spring of 1953. We had made plans for it over the winter of 1952 and 1953.

Q. You went into the station on October 30, 1951? A. October 30, 1951.

Q. And you made plans with others to form the Association shortly after you went into the station? A. Well, I would say within a year after I went in, or maybe a little more than a year. I can't quite remember.

Q. Sometime after the rent was raised in October 19521.

A. Well, let's say sometime after my rent was increased.

Q. And most of these things seem to occur sometime after your rent was increased, didn't they? A. Yes, sir.

Q. That was sort of a source of friction between you and the Conoco people? A. That was a sore spot.

Q. And it has continued to be a sore spot? A. Yes, sir.

Mr. Barton: I think that is all.

# Redirect examination by Mr. Boyd:

Q. Mr. Cornell, what was the gallonage when you started that station? (3475) A. If I remember correctly. I can refer to my books at home, about five thousand gallons a month.

Q. You opened it new, didn't you! A. Yes. The first month was between four and five thousand gallons, as I recall.

Q. And after that what was the gallonage! A. It gradually increased every month until it got up to around 11,000 in the winter and between 13 and 14 in the summer. each summer, and I have had it do over 15,000.

Q. What was the gallonage on September 30,-at the end of the lease, October 30, 1953, what was the gallonage at that time, if you remember! A. I would imagine around 12,000 to 13,000 gallons. I would again have to refer to my records at home to be sure.

Q. What was it on September 30, 1955, when you were again approached to vacate the station? A. I think it was down to around ten, which I could attribute to the fact that I had given up the trading stamps which did decrease gallonage somewhat, but I ended up with more net profit on decreased gallonage.

Q. What was the gallonage when you finally left the station at the end of January or the first of February 1956?

A. About 10,000 gallons a month.

Mr. Boyd: That is all. Hearing Examiner Kolb: No further questions.

(3476) TED OLSEN was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

## Direct examination by Mr. Dias:

- Q. Please state your full name for the record? A. Ted Olsen.
  - Q. By whom are you employed? A. Sidles Company.
  - Q. In what capacity? A. As a salesman.
- Q. How long have you been so employed? A. For the last ten years.
- Q. What is your sales territory, Mr. Olsen? A. From Dodge Street north, and east to 30th.
- Q. Are there any Texaco and Conoco service stations in your trade area? A. Oh, yes. I think there are 15 Texaco and 7 or 8 Conoco.
- (3477) Q. Of the Texaco, how many do you regularly solicit? A. Four.
  - Q. Do you call on the other eleven? A. No.
  - Q. Have you ever called on them! A. Yes, I have.
- Q. How recently? A. Probably not for the last two years.
  - Q. Why did you give up?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

#### By Mr. Dias:

- Q. You may answer. A. Because I couldn't do any business with them.
- Q. Of these four that you sell, what products do you sell to them? Can you name these Texaco stations? A. Can I name them?
  - Q. Yes, the four. A. I think so. Wager Texaco.

Mr. Lorenzen: Could you give the address, too!
The Witness: 1540 North Saddle Creek.

#### By Mr. Dias:

- Q. What do you sell to Wager? A. Gates fan belts, AC spark plugs.
  - Q Anything else! (3478) A. Thermostats.
  - Q. Do you sell them any tires! A. No tires.
  - Q Batteries! A. No batteries.
- Q. Anti-freeze! A. I think he has bought four or five cases of Prestone this year.
  - Q. Do you mean 1956? A. 1956 and 1957.
  - Q. This season! A. Yes.
- Q. What tires and batteries does that station handle, if any? A. Goodrich.
  - Q. Both tires and batteries? A. Yes.
- Q. Do they have any Goodrich accessories? A. Yes, chemicals that he buys from Goodrich.
- Q. Is that an owned station? Does he operate and own that station? A. No, that is a leased station.
  - Q. What is the next Texaco station! A. Pearson.
  - Q. Spell that. (3479) A. P-e-a-r-s-o-n.
  - Q. And the address? A 54th and Military.
- Q. Before we go on with that one: Do you sell any filters to Wager's? A. No.
- Q. Have you ever sold him any filters? A. I did when he first went in there.
- Q. When was that? A. That has been about two years ago.
- Q. How long— A. I sold him one or two shipments and that was it.
- Q. When was that? A. When he first went into the station.

- Q. That is when he bought them? A. Yes.
- Q. Did he buy any more after that? A. No.
- Q. Why? A. Well, he explained it to me, that he was under obligation by his—

A. (continuing)—from his oil company, through his (3480) oil company.

- Q. You mentioned Pearsons, and the address. What do you sell to that station? A. Not very much. It is miscellaneous items mostly: polish, white sidewall cleaner, car soap, a tool now and then.
  - Q. Do you sell them any filters? A. No, I don't.
  - Q. Anti-freeze! A. No anti-freeze.
  - Q. Tires? A. No.
- Q. Batteries A. No. Occasionally some chemicals.
- (3481) Q. Do they handle tires and batteries? A. Yes, and he handles Eirestone brand.
  - Q. Of both tires and batteries? A. Yes.
- Q. Does he own the station? A. No. I think it is leased. I am sure it is.
- Q. What is the next station? A. Houlton, 41st and Dodge.
  - Q. What do they buy? Tires? A. No.
- Q. Batteries? A. No. They don't buy tires or batteries.
  - Q. Filters? A. I sell him filters occasionally.
- Q. What type! A. AC. Thermostats, some gaskets, some chemicals, and polish.
  - Q. Any anti-freeze! A. No.
- Q. Do they carry tires and batteries at the station?
  A. Yes, they do,

Q. What brand! A. Firestone.

Q. Does he own the station! A. No. That is leased.

(3482) Q. Do you have another Texaco station? A. Whitney's Texaco, 70th and Dodge.

- Q. Do you sell them? A. It is usually miscellaneous items. Shock absorbers, a few chemicals, occasionally sell him an AC filter.
  - Q. Any anti-freeze? A. No.

Q. Tires and batteries? A. No. sir.

Q. Do they handle them? A. Yes, they handle them.

Q. What brand? A. They handle Firestone.

Q. Does he own a station? A. No, he doesn't.

Q. Do they have any others that you sell to? A. No.

- Q. Any others that you tried to sell to? A. I have tried to sell all the rest of them. I can't remember them all. There is Ray's Texaco, 30th and Pratt, and Jensen Brothers, at 72nd and Blondo.
  - Q. Any others that you can think of? A. Not offhand.

Q. When was the last time you tried to sell to Ray's?

A. It has been over a year ago.

(3483) Q. Does he own the station? A. No, that is leased.

Q. Does he handle TBA? A. Yes.

Q. What brand? A. I am not sure, but I think Firestone.

Q. Jensen Brothers, when did you last try to sell them?
A. Along in November,

Q. 1956? A. Yes.

Q. Do they own a station? A. No; that is a leased station.

Q. Do they handle TBA? A. Yes,

Q. What brand? A. I don't know. Frankly I don't remember. I believe it is Goodrich. I am not sure.

- Q. You say you sell to seven Conoco, or there are seven in your territory? A. There are about seven.
  - Q. In your sales territory? A. Yes.
  - Q. Do you sell to any of them? A. About three—four.
  - Q. Can you name them? (3484) A. I call on four.
- Q. Can you name the four? A. King Conoco, at 60th and Ames. They have another station at 42nd and Ames, under the same name. There is a Guildersleeve.
- Q. Do you sell King Conoco anything? A. It is a new station. We sold them some equipment. And at one station, at 60th, I have a stock of thermostats in there and a stock of battery hold-downs, plastic battery hold-downs.
  - Q. That is at the 60th Street store? A. Yes.
- Q. How about the 42nd Street store? A. I haven't sold them anything except battery charger, since they have been in there.
- Q. Which is the one which has opened recently? A. 60th Street is a new station. Last fall, or last summer.
- Q. Was it that station that you sold some equipment?

  A. Yes.
- Q. And the thermostats and battery hold-downs? A. Yes.

#### (3485) By Mr. Dias:

- Q. What is the King Conoco? Is that a leased station?
  A. Yes.
  - Q. Are they carrying TBA! A. Yes.
- Q. What brand? A. They did have Goodrich and recently they switched to Firestone.
  - Q. When was that? A. Within the last couple of weeks.
- Q. When did you first call on that new station? Were they open for business when you called on them? A. Yes. They had just opened.

Q. And when they just opened were their TBA supplies in the station? (3486) A. Yes, sir.

Q. What brand were in there at that time? A. Good-

rich was in there originally.

Q. What about the 42nd Street store? A. They have just recently taken that over, within the last month.

Q. Did you call on them when they first opened? A.

Yes.

Q. Were you there the first day? A. No.

Q. How about the 60th and Ames Store? Were you there the first day it opened? A. Yes. I think I was.

Q. How about the 42nd and Ames store? When did you get there? A. It was the following week.

Q. A week later? A. Yes.

Q. What was in that station? A. At that time it was Goodrich. You are talking about TBA?

Q. Yes. A. It was Goodrich.

Q. The two stations for King, does that take care of two of the four that you call on? (3487) A. Yes, sir.

Q. What is the next Conoco ! A. Bray's Conoco. He is at 204 North 30th.

Q. What did you sell Bray's? A. Ignition parts and thermostats.

Q. Tires! A. No.

Q. Batteries? A. That is about all I sell them.

Q. Does that station handle tires and batteries? A. Yes.

Q. What brand? A. Goodrich.

Q. Does Bray own the station? A. No. It is leased.

Q. Do you have another one, another Conoco station?

A. Guildersleeve.

Q. Where are they located? A. 42nd and Nebraska Avenue.

- Q. Do you sell anything to them? A. Not very much. But I call on him because he bought equipment from us when he first went in there. And he has bought a little stuff since.
  - Q. Such as! A. Mostly tools.

(3488) Q. Is that what you mean by "little stuff"? A. Yes.

- Q. What is the equipment that you mentioned? A. They bought a jack and Battery Charger.
  - Q. Anti-freeze! A. No.
  - Q. Tires, batteries? A. No.
  - Q. Filters? A. No, sir.
- Q. Does he carry tires, batteries, filters, anti-freeze?
  - Q. What brand? A. It is he has a Goodrich setup.
- Q. Does Guildersleeve own the station? A. No. It is leased.
- Q. Are there any other Conoco stations? A. Not that I call on, no, sir.
- Q. May I suggest the name Babe's Conoco? Does that refresh your recollection? A. Babe is out of business now. I did call on him.
- Q. When did you call on Babe? A. I-think that has been two years ago. About two years ago since he left the station.
- Q. Where are they located? (3489) A. 63rd and Military.
- Q. What did you sell to him? A. I sold him most everything at first. Ignition cabinet, thermostats, Gates hose and fan belts.
- Q. Batteries! A. Batteries! No, I don't think we ever sold him batteries. Or tires.
- Q. When did he stop buying? A. I think the last six months he was there he quit buying. He had bought filters

from us but he stopped buying Fram filters. He left. I don't know why he left.

- Q. Did he give you any reason for not buying your products? A. He said he was supposed to buy them from Frost.
- Q. Who told him that? A. His salesman. The salesman who called on him.
  - Q. The Frost salesman? A. From Frost.
  - Q. What line did he handle? A. Fram.
- Q. I mean— A. I had Fram with him, and he continued with Fram.
- Q. Did he carry Firestone and—Did he carry tires and batteries? A. He did, yes. But I am not sure what brand he carried.
- (3490) Q. Does your sales territory take in Beatrice?
  A. I was in Beatrice before I came to Omaha.
  - Q. How long ago was that? A. I went there in '46.
  - Q. How long did you stay? A. Until '54.
- Q. Did you have any Texaco or Coneco accounts in Beatrice? A. I had three Coneco.
- Q. Will you tell us about those? A. There were three there, and three that I called on. I sold all three of them. They were all three pretty good accounts. One of them sold Seiberling tires and Delco batteries up until '53, about the latter part of '53.
- Q. Then what happened? A. He told me he had to sell Goodrich tires and Goodrich batteries, that I couldn't sell him those two products any more.
- Q. Were you able to sell him thereafter? A. I sold him filters and a few other items for a while. But his account dropped I think every month after that.
- Q. Do you know Edeal's Conoco in Beatrice? A. That is another one, George Edeal.
  - Q. That is the last name—E-d-e-a-l? A. Yes.

(3491) Q. Can you tell us about that station? A. He bought practically everything from us until in 1953. Then he told me that he had to patronize a jobber from Lincoln, Chris. He came down from a truck every week. He was expected to buy his filters and TBA items from him.

Q. What was that dealer's name that he had to buy from? A. I am not sure of his name. I think it was Chris.

Q. What products does he sell? A. He was selling Goodrich line.

Q. May I suggest the name Chris Beck? A. Beck; that, is it.

Q. Do you have another station account there? A. The other station changed hands several times. I have forgotten. Weaver was one. There were two after that that he did business with, up until 1953. And some after that.

Q. What did you sell him prior to '53? A. Fram filters.

Q. Tires! A. Spark plugs, chemicals, batteries. No tires.

Q. And after 1953 what happened? A. I lost the Fram business, almost a hundred percent.

Q. To whom? A. And the spark plug business.

(3492) . Q. To whom did you lose it? A. We still sell them some chemicals. To Goodrich—Chris Beck.

Q. Did Weaver carry Goodrich batteries? A. That change didn't take place until after Weaver had left. I sold Weaver nearly everything he bought. But he next fellow was in there.

Q. Did Weaver leave prior to '53? A. Yes.

Q. Who was in there when the change occurred in '53?

A. I don't remember. I can't think of his name.

Q. Can you think of his address! A. It was South Sixth. I don't remember.

Q. South Sixth? A. Yes.

Q. In Beatrice. How far is Beatrice from Omaha? A. About 100 miles from Omaha. Forty miles from Lincoln.

Q. Babe's Conoco, is that owned or leased? A. It was a leased station. It wasn't a new station.

Q. How about Edeal's! A. That was a new station when he went into it.

Q. Leased! or owned! A. Leased.

# (3497) Cross-examination by Mr. Lorenzen:

Q. How about H. E. Smiley, 50th and Underwood? Is

he in your terrifory? A. Yes, he is.

Q. Do you sell him a few things! (3498) A. He has a garage called Smiley's garage in the rear of his place. I sell him some garage items, some automotive parts, thermostats and Walker mufflers.

Q. And he is one of these leased Texaco stations where he sells his gasoline? A. The station is. But the garage

is not leased. He owns that garage.

.Q. It is part of the same operation, isn't it? A. Yes.

Q. How about Paul Steers, at 42nd and Hamilton? A I do call on him occasionally.

Q. And you sell- A. Paul at one time was a very good customer.

Q. And now you still sell him Prestone, don't you! A. I have known him for years. I don't think I have sold him any Prestone for two years?

Q. You sold him about \$240 worth of equipment or products of one kind or another within the last few months.

A. In a year's time.

Q. The last few months. A. No.

Q. Within the year? A. Within the year possibly.

Q. Mr. Talmadge at 42nd and Ames? A. I don't call. on him.

(3499) Q. You don't know him? 'A. I know him but I don't call on him.

Q. And Fred Tex, at 60th and "L"? A. That is not in my territory. That is south of Dodge.

Q. Too far south is it? How about 21st and Broadway?

Is that in your territory? A. No.

Q. Mr. Wager—your sales to him have been in the neighborhood of about what? \$1,200 during the year? A. I would say that is possible. I don't have any way of knowing exactly.

Q. That sounds not too far out of line to you. A.

That's right.

Q. When did you have this conversation with Mr. Wager about cartridges, were they, for the oil filters? You testified about some conversation that you had with him. A. That's right.

Q. About when was that? A. It is shortly after he opened up there. I would say in the last year and a half. I think he has been there two years. It has been within

the last year and a half.

Q. Can you place the conversation any more definitely than that? A. No, I don't think I can. I had no reason for trying to remember it.

(3500) Q. You think it took place sometime within

the last year and a half? A. Yes.

Q. Mr. Wager buys Gates fan belts from you? A. Yes.

Q. And radiator hose, and AC spark plugs, among other things! A. Yes.

Q. You sell him these quite regularly, don't you? A. Yes, I do.

Q. Those fan belts are various sizes? A. He has a

complete stock.

Q. Where do you keep fan belts? I don't know much about this business. Do you hang them up on a rack of some kind? A. That's right.

Q. And the manufacturers of the fan belt usually give you something to hang them on! Is that the way it works?

A. They furnish the rack, yes.

Q. This chap Houlton, you sell him about the same amount as you do to Wager, don't you! In dollar volume it is about the same! A. It could be a little less, if anything.

Q. You think it might be a little less? A. I would guess

that it would be.

Q. But you don't know that for sure either? A. No, sir.

(3501) Q. It might be about the same! A. I said I think it would be a little less.

Q. How about Mr. Leon Pearson? Would you say you sold him an average of about \$50 a month of one thing or another? A. Well—

Q. Including Rislone. A. I would imagine that would

be pretty close to correct.

Q. Mr. Pearson is in one of these leased stations, as is also Mr. Wager and Mr. Houlton. Is that correct? A. Yes.

Q. They are all in leased stations. In addition to that you know, don't you, that Mr. Pearson is the son-in-law of the Texas Company state manager? A. I know there is some connection. I didn't know what his capacity was.

Q. Mr. Whitney is at 70th and Dodge. And you sell him about \$75.00 per month of items, don't you? In that neighborhood? A. I couldn't be too sure of that either. That seems like it's pretty high for his purchases.

Q. You sell him AC filters among other things, don't

you? A. Occasionally.

Q. The \$75.00, it is somewhere in that neighborhood. It may be less, you think, but you don't have any definite recollection of how much less? (3502) A. No, I haven't.

Q. Jensen Brothers. You sell to them too you said? A. I used to call on them, I said. I haven't called on them for a couple of months.

Q. You haven't called on them for a couple of months?

Q. What did you sell them before that? Kendall Motor Oil among other things? A. I think he bought one case of Kendall motor oil when he first went in there. He has it in the back room,

Q. This is when he first went in? A. He has it in the back room. He showed me where he had it in the back

room. In a Havoline case.

Q. That is where he stores his supplies and has boxes of things? A. He dumped it into a Havoline case.

Q. He did? That wasn't a very nice thing to do, was it?

A. I didn't like it.

Q. I didn't think Havoline would like it either.

Do you know how much any of these people on whom you call also buy from your other competitors, such as the Anderson Company? A. I am sure I couldn't tell you.

Q. You couldn't tell about that? A. I would have no

way of knowing.

(3503) Q. In some instances do you know that they do buy from Anderson also? A. Yes.

Q. And there are about ten I think. We have had a list of competitors in this Omaha area with whom you compete in addition to the competition furnished by the suppliers of Goodrich and Firestone, isn't that about right? A. I think so.

Q. And those fellows have salesmen out beating the bushes, so to speak, too, in the same territory where you sell? A. Right.

# Cross-examination by Mr. Barton:

(3506) Q. That is rather common, isn't it, these service stations, some of them who don't purchase very much will, when they are down to the store, pick up when you don't come around? A. If they go in there and pay cash, I have no way of knowing it.

Q. You get a sales commission on it because it is sold in your territory, but you don't know about the particular sale? A. I don't know about it unless it is charged. Unless?

· "it is an account—open account.

Q. But you still are paid a sales commission on that

which is sold to somebody in your area? A. Yes.

Q. And that is quite a common occurrence, isn't it? For your customers to go down to the store, go to the store and purchase on the spot for sales they have? A. It is more so in other territories than mine, because I am further out. It is true downtown.

Q. The people make it a habit of going to the store and thus not tying up so much capital in their stock? A. Yes.

Q. That is what is known as a pickup? A. Yes.

# (3508) Redirect examination by Mr. Dias:

Q. You were asked about Paul Steers' station. You stated at one time they were good customers. What is the situation now? A. Right now we sell Paul ignition parts. Q. What did you sell him? A. Before that we sold him about everything.

Q. Including tires? A. I was talking about the old days.

Paul has been back there a long time.

(3509) Q. How many years? A. I am not sure of that. But it has been; I would imagine, at least 15 years.

- Q. You only came up here in 1954? A. I lived here before that.
  - Q. How long ago was it? A. Before the war.
  - Q. Before the war! A. Yes.
- Q. Which one! Korean or the World War II! A. World War II.
- Q. Was it at that time that he was a good customer?

  A. Yes, sir.
- Q. How long did he continue to be a good customer? A. I don't know when he quit being a good customer, because I left this territory. When I came back three years ago he wasn't buying much from us.
  - Q. What is he? A Texaco station? A. Yes, sir.
  - Q. Does he own his property? A. No, he doesn't.
- Q. Talmadge—you don't know him but you call on him. You were asked about Talmadge. A. I know him, but don't call on him.
- Q. Did you ever call on him? (3510) A. I called on him probably the first six months I was here.
  - Q. That was in 1954? A. 1954.
- Q. Did you sell him anything at that time? A. Very very little. Didn't pay me to call on him.
- Q. Is that why you gave up calling on him? A. Yes, sir.
  - Q. That is a Texaco station too! A. Yes, sir.
  - Q. Does he own the property? A. No, sir.
- Q. Mr. Barton asked you about a series of competitors who were selling around to these various Conoco stations. I don't think I understood your answer.

Is it your answer that you knew there are competitors around? Was that it? Or did you say that you knew they were selling to these various Conoco stations? A. I don't recall. The question was did they have other salesmen calling on them. I knew that, yes.

# Ted Olsen, for Commission—Recross Al Scoville, for Commission—Direct

Q. You knew they had other salesmen calling on them. Do you know whether or not they buy from those other salesmen? A. No, I don't.

Q. Do you know what Paul Steers is handling now in the line of TBA? (3511) A. Yes. He handles Goodrich.

Q. Tires and batteries? A. Tires and batteries.

Q. And Talmadge? Do you know what they handle?

A. I think Goodrich.

# Recross examination by Mr. Lorenzen:

Q. Did you sell this fellow Steers before you went away? A. Yes. I knew him before I went away.

Q. He was a very good friend of yours? A. Good

friend of mine and good customer of ours.

Q. Then when you left, just before the war, some other salesman of course took over that territory. Is that right?

A. That's right.

Q. Then when you came back you found he wasn't buying as much from this company as he had before? A.

That's right.

AL SCOVILLE was called as a witness for the Commission and, having (3512) been first duly sworn, was examined and testified as follows:

# Direct examination by Mr. Dias:

Q. Will you state your full name and business address for the record? A. Al Scoville.

Q. Business address! A. 730 Pacific. Sidles Company.

Q. How long have you been employed by Sidles, Mr. Scoville! A. Eight years.

## Al Scoville, for Commission-Direct

Q. In what capacity? A. Salesman.

- Q. For the full eight years? A. For the last six years.
- Q. Prior to that? A. Counter salesman.
- Q. What is your sales territory? A. Omaha, south of Grover Street.
- Q. Are there any Texaco stations in your sales area?

  A. There are four lessees.
- Q. Is that the total stations in your area? A. Total Texaco stations?
  - Q. Yes. A. No, sir.
- (3513) Q. How many are there in your area, if you know? A. There are six.
  - Q. How many do you call on? A. Four.
  - Q. Can you name them? A. The ones I call on?
  - Q. Yes. A. Bob Jackson's Texaco Service.
  - Q. And the address? A. 42nd and Valley.

George Peers, Texaco Service Station, on 42nd and L Streets.

- Q. And the next one? A. Charlie Cox Texaco Service, 13th and Harrison.
  - Q. And the other one? A. Kress Texaco.
  - Q. Where are they located? A. Bellevue.
- Q. Do you sell to Bob Jackson? A. Sold him equipment only. And he has picked up on several occasions emergency items and equipment pieces.
- Q. Have you ever tried to sell him batteries and accessories or tires? A. I mentioned them. That is about as far as I got.
- Q. Does he handle them at the station? Does he handle (3514) tires, batteries, accessories at the station? A. Yes, he does.
  - Q. What kind does he handle? A. Firestone.
- Q. And George Peers? A. He is a new one. He owns his own station.

## Al Scoville, for Commission-Direct

Q. He owns his own station? A. Yes.

Q. What do you sell him? A. Fan belts, thermostats, all the chemicals, hose clamps. All accessory and TBA items, along with other jobbers.

Q. Do you sell him any tires and batteries? A. No.

He handles Firestone tires.

Q. What batteries? A. He handles Grant batteries.

Q. How about Charlie Cox? A. Charlie Cox I sell ignition parts and thermostats and fan belts.

Q. Fan belts? A. Yes, sir.

Q. Have you ever tried to sell him tires and batteries?

A. Yes, sir. He sells Firestone.

Q. Does he own his own property? A. No. He is a lessee.

(3515) Q. How about Kress? A. Kress, I sell him a small amount of ignition. Very small.

Q. Anything else! A. He handled Kendall oil, and

keeps it in Texaco boxes.

(3516) Q. Do any of those stations purchase your anti-freeze, Prestone or Peak? A. George Peers does.

Q. What does Kress—does handle tires and batteries?

A. Yes.

- Q. What brand? A. B. F. Goodrich.
- Q. B. F. Goodrich! A. B. F. Goodrich.

Q. Does he own his property? A. He is a lessee.

- Q. And you said there are six in the territory. Have you ever called on the other two? A. Tex Service Station, at 60th and L, and R&R Texaco, 33rd and Q. R&R has only been there about three months. The previous lessee was there only a short period of time. And the previous one to him, Holcomb, had been there about two years. I did a little business with him but mostly pickup items.
- Q. How long has "Tex" been at 60th and L? A. Thirty-five years.

#### Al Scoville, for Commission—Direct

- Q. Thirty-five years? A. He owns his own station.
- Q. And R&R! A. He has been there about two or three months.
- (3517) Q. Do you recall when the station opened? The day it opened? A. At 33rd and Q?.
- Q, Yes. A. The station was there when I was on the territory.
- Q. A new operator? A. There have been three lessees, since I have been here.
- Q. How soon did you call on that station after the latest lessee had been there? A. I haven't called on it since Moss left there.
- Q. How about Conoco stations? How many Conoco are in your territory? A. Four.
  - Q. Total of four in the territory? A. Yes.
  - Q. How many do you call on? A. Two.
  - Q. Do you sell anything to those two? A. Yes, sir.
- Q. Will you name them? A. Dean's Conoco, at 42nd and L.
- Q. What do you sell to them? A. Dean I sell ignition. He has about \$30 worth of ignition.
- Q. Anything else? (3518) Various equipment repairing supplies service items on which I make no profit. We don't make profit on equipment repairing.
- Q. How about tires and batteries and anti-freeze! Do you sell him any of that! A. No, sir.
- Q. Does he handle that type merchandise! A. Yes, he does. He said he would like to buy from me but said he couldn't.
- Q. Said he can't! Why! A. He said the reason for it that he couldn't buy from me is that it would cause too much disturbance. That is the only reason he gave to me.
  - Q. What does he handle? A. B. F. Goodrich.
  - Q. Does he own his own station? A. He is a lessee.

#### Al Scoville, for Commission—Direct

Q. How about the other Conoco station? A. Nieto's Conoco station. Frank Nieto, 33rd and Q.

Q. What do you sell to them? A. He has a small ignition assortment and a small brake kit assortment, and Frank will pick up occasionally mufflers and other automotive parts, mostly that are not handled by Frost Battery and B. F. Goodrich.

Q. Have you ever sold him anything else! (3519) A. I used to sell him Gates fan belts. In 1953 I happened to make a call on the station. There was a Conoco man and B. F. Goodrich man in coveralls. I said, "Frank, what are those men doing!" He said, "They are supposedly cleaning up the station."

I had Gates belt racks up. They started tearing them off the board. Frank said, "What are you doing that for!" This Conoco man said, "We are just going to clean up your station a little bit."

He started resleeving the belts—they have a sleeve for merchandising—and Frank said, "Do I have to have B. F. Goodrich belts?" He said, "We will take care of it. We will put up these boards and from now on we will take care of your belts for you."

Q. Who were those men? A. Frank turned around to me and said, "Al, will you put your belts in these sleeves?" I said, "Whatever you wish." It is a sleeve—I think the sleeves for our belts—they don't have the same brand belts as advertised on the sleeve, and we have the same kind of sleeve.

It is a common practice when you resleeve belts that you put them in a sleeve that says "V Belt" or the brand belt that is in it.

Q. What sleeves were they putting on your belts? A. B. F. Goodrich.

(3520) Q. Do you know who those executives were?

A. No, I don't, because the first time I had seen him was the last time I had seen him at that particular station.

### Al Scoville, for Commission—Crass

- Q. When did that occur? A. In the summer of 1953.
- Q. Have you sold him belts since that time! A. The only belts we sell, some telephone company trucks in the service station. Some of those belts, we handle a very broad coverage of belts which are not handled by B. F. Goodrich jobber, and we pick those up occasionally.

Q. Does this Nieto carry tires and batteries, also? A.

- Q. What brand 1 A. B. F. Goodrich.
- Q. I take it he doesn't own the station? A. He is a lessee.

## Cross-examination by Mr. Barton:

(3523) Q. How often have you called on Boyd's Conoco! A. That is now Frank's Conoco!

Q. Yes. A. I called on it when Boyd was there. He had a one-bay station. I would ask him if he wanted filters, like C-4 Frams or wiper blades, a small order. He said I had better save that for B. F. Goodrich. They don't like to express—

Q. As a matter of fact, he bought \$500 from you last year, didn't he? A. Frank? From Boyd's Conoco? Yes.

Q. 24th and G. A. Boyd's Conoco. Of that \$500, \$300 of it was for a target machine that he had on a shooting range.

Q. And he bought from Storz' supply! A. He bought one buffer from Storz Supply.

Q. And he bought from Targay Auto Supply? A. All items that he didn't stock in his place of business.

Q. Do you mean he would pick them up as he needed them? A. Yes.

## Al Scoville, for Commission Cross

Q. Which is a common practice among service stations located in the downtown area? A. Yes, it is, because they haven't the facilities to stock.

## (3525) Cross-examination by Mr. Lorengen:

Q. Are you on more friendly terms with these Conoco dealers than you are with the Texas dealers? A. No, sir.

Q. It just happens that you had some information about where those others bought and you don't have it in the case of the Texas stations? Is that it? A. I have sold Bob Jackson a tire changer and some tire repair tools.

Q. Do you know that he gets his thermostats, his spark plugs, his filters from Targay or Jones Auto, which I guess is an affiliated company? A. He could very possibly. I don't know where he gets that. I have not been able to sell him some of that stuff.

Q. This R&R Company, do you know that they have a substantial volume of purchases from your competitor, the Anderson Company! A. Yes, they have an Anderson ignition assortment.

Q. And they also buy— .A. Carburetion and stuff like that.

(3526) Q. This chap Fred Tex. You said you couldn't sell him much of anything, didn't you? A. Fred Tex is not a lessee.

Q. That's right. You testified you couldn't sell himmuch of anything. I guess you can't according to these figures. A. No.

Q. He buys from Carl Anderson and Company? A. I have not called on Fred Tex.

## Al Scoville, for Commission-Cross

(3527) Q. Do you know that he buys from Carl Anderson and Company and Storz! A. He does buy from Storz Supply Company. Carl Anderson I don't know. Storz Supply is more parallel to us than Carl Anderson, Carl Anderson being an ignition and carburction specialty house.

Q. That is what Carl Anderson is? A. Yes. Ignition and carburetion specialty house. They sell Rislone and Auto-Lite batteries. The only TBA items they sell.

Q. And you haven't been able to sell this fellow Tex anything, or do you sell him a little? A. He used to pick up on cash payments a little bit.

Q. And that is all? A. A very small amount.

(3528) Q. You sell Charlie Cox Gates fan belts and AC filters, and some kind of thermostats which your house sells? A. Yes. Ignition, Gates belts, and thermostats.

Q. And you have sold him those Gates belts over some time, haven't you? A. Yes, I have. Previously it was Brooks. When Brooks was a lessee it was Gates belts and—

Q. Cox took over from Brooks, came in as a new lessee and continued to handle Gates belts? A. Yes.

Q. And the same with the AC filters? A. He doesn't have AC filters. He has Fram and Firestone filters.

Q. Are you sure? A. He might have one or two. But his predominance is Firestone.

Q. And also Gates radiator hoses? A. Yes, he has Gates radiator hose.

Q. You sell him that? A. Storz Supply, they handle his hose. I take care of his belts.

Q. Storz Supply is another competitor of yours! A. Yes.

Q. How about the thermostats? Does he get those from you? A. Yes.

(3529) Q. And he has been getting those from you for sometime too? A. Yes, sir. He does.

#### Colloquy

Q. How about the Everseal gasoline and radiator caps? Does he get those from you? A. Yes, sir.

Q. And he has done that for sometime? A. For about

four or five months. Yes, sir.

Q. He has just been in there about ten months? A. Yes, sir.

Mr. Lorenzen: That is all.

Mr. Royall: Your Honor, this hearing has illustrated (3530) something we have said before, and right now it is right before our eyes and in our minds, and I want to make a request of the counsel

for the government.

We find that in selecting witnesses for territories in these cases, particularly in Omaha, there are a considerable number of gaps that don't cover some of the larger purchasers—dealers who are purchasing goods from these and other companies. It would certainly facilitate this case in general, and prevent the possibility of having to come back at least to Omaha, if they would be willing to furnish us tomorrow the amounts of TBA purchased by the following Texas stations—

Mr. Dias: Before you go on, who is supposed to

do this! Us!

Mr. Royall: You.

Hearing Examiner Kolb: Supply what?

Mr. Royall: From Sidles, Anderson, and the others that they have put on, the jobbers. The stations that we have in mind are the Virgil Allison station, at Waterloo, Nebraska; C. R. Anderson station, at 501 East Broadway, Council Bluffs; Frank Kerny station at 20th and "Q" Streets, Omaha.

#### Colloquy

Hearing Examiner Kolb: Those are all stations that haven't been discussed by any witnesses?

Mr. Royall: By any witnesses of the company.

Hearing Examiner Kolb: You can discuss that with (3531) Mr. Dias, what he wants to do. I wouldn't order him to do anything on that.

Mr. Royall: I haven't asked your Honor to

order. I am making a request.

Hearing Examiner Kolb: Make your request to him, to Mr. Dias. Not to me. You are not requesting me to do anything?

Mr. Royall: No, sir.

Hearing Examiner Kolb: Then there is no use of me staying here.

Mr. Royall: Your Honor, I want it to appear on the record that we are requesting this in connection with the examination of these witnesses: Art Friedgen, 405 East Locust Street, Carter Lake, Iowa; Ed Hughes, 20th and Douglas Street, Omaha, Nebraska; Robert Lynch, 2nd and Vine Streets, Council Bluffs; Bob Piatt, 13th and Jackson, Omaha, Nebraska.

Those are the principal ones, your Honor. They would help.

Mr. Dias: Who are they?

Mr. Royall: They are Texas dealers that none of your witnesses you put on the stand, Sidles or others—

Mr. Dias: Have mentioned?

Mr. Royall: Not only have mentioned, they say they don't know anything about the quantities, and in many instances don't know anything about it. They brought up part of the (3532) records, just the records for the ones they wanted to testify about.

Mr. Dias: All right, you produce those.

Mr. Lorenzen: Couldn't we get the ledger cards for those accounts just as well as you got the handpicked ones this morning, where the sales decreased? We would now like six others to make it fair. Couldn't you ask the same chap who produced those records to produce these?

Hearing Examiner Kolb: Doesn't your Texas

Company man have that information?

Mr. Dias: Of course he does.

Mr. Royall: No, sir.

Mr. Dias: It is part of your rebuttal.

Mr. Royall: These are dealers, your Honor. These are dealers. Station dealers.

Mr. Lorenzen: These are estimates and incompetent.

Mr. Dias: Put your estimates in.

Mr. Lorenzen: The only way we can get it is to get the records from the people you have had testify. They bring in only a very small and unfair segment.

Hearing Examiner Kolb: There is no use encumbering the record with all that argument. I will call a recess.

(3538) PERCY L. KANAGO was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

## Direct examination by Mr. Boyd:

Q. Mr. Kanago, will you give us your full name, please?
A. Percy L. Kanago.

Q. With what company are you connected? A. Storz Supply Corporation.

Q. Where is it located? A. 2215 Hardy Street, Omaha.

Q. What is your position with the company? A. Sales Manager.

Q. How long have you been with the company? A. Since 1922.

Q. How long have you been sales manager? A. Sixteen years.

(3539) Q. Will you tell us what kind of business is Storz Supply Corporation engaged in? A. We are wholesale distributors of automotive replacement parts and equipment.

Q. What products do you sell? A. That covers several classifications, sir.

Q. What classes? A. Hard parts, that is engine parts, tires, batteries, fan belts, spark plugs, replacement items of motors, trucks, and passenger cars.

Q. Would you sell radiator chemicals? A. Oh, yes.

Q. How about waxes and polishes? A. Yes, indeed.

Q. Oil filters, fan belts, radiator or hose? A. Yes, sir.

Q. What brand tires do you handle? A. Century.

Q. What about batteries? A. Delco.

Q. Do you have any other brands? A. No other brands.

Q. How about spark plugs? A. Champion.

Q. And oil filters? (3540) A. We have two. Fram and Walker.

Q. Fan belts and radiator hose? A. Gates Rubber Company.

Q. Mr. Kanago, what is your trading area? The trading area of your corporation? A. Using Omaha as the center, it would be a radius of an average of 75 to 80 miles.

Q. What classes of customers are sold in that trade area? A. It would be new cars—

Q. That you do business with, in other words? A. New car dealers, independent garages, that is independent re-

pair shops, service stations—gasoline service stations, fleets, contractors. It could be classified as industrial, perhaps. I believe that will cover it.

- Q. How many salesmen does the firm employ? A. Twelve.
- Q. Could you tell us approximately what the annual volume of business was last year, 1956? A. I can't give you the exact figure. I would say it approximates a million and a half.
- Q. What about 1955? A. That was about a million and three-quarters.
- Q. And 1954? A. I am only hazarding a guess now, on 1954; not so good as 1955.
- (3541) Q. Mr. Kanago, can you tell us about how many service stations, that is of all kinds, are in the Omaha area? A. Do you mean the greater—the area that we cover?
- Q. I would like it both ways if you can tell us. I thought you might know about Omaha. A. Omaha, yes. That is right at 350. I believe the classification shows actually 340.
- Q. What classification is that? A. Telephone directory survey, classified.
- Q. With that number could you tell us what you would estimate the balance would be in the trading area in which you do business? A. I couldn't. I really couldn't.
- Q. In other words, you know it just right in this vicinity! A. That is right.
- Q. Do you have any idea how many Texaco stations are in the Omaha area? A. Thirty-one, according to the classification.
- Q. That is the telephone book? A. In the telephone book.
  - Q. What about Conoco stations? A. Sixteen.
- · Q. Does your firm do any business with the Texaco stations in this area? A. Some.

- (3542) Q. Can you tell us what kind of business they do with them? That is, the type of product you sell? A. I believe, sir, that I would rather—in that I am not actually contacting these people—I would rather that the representatives who actually contact them answer that question.
  - Q. Do you mean the salesmen? A. Yes, sir.
- Q. Are the salesmen of your company instructed to solicit the Texas stations for business? A. Yes, indeed.
  - Q. What about Conoco stations? A. Yes, sir.
  - Q. Do they do so? A. Yes, sir.
- Q. Mr. Kanago, you mentioned that you wanted the salesmen to testify about actual contacts with the stations. I wonder if you could tell us whether or not your firm sells tires to Texas stations? A. Do we sell tires?
  - Q. Yes, sir. Century tires? A. No, sir.
- Q. What about the batteries? I believe it is Delco? A. Yes, sir.
  - Q. Do you sell batteries? A. The name is Delco.
  - (3543) Q. That is your brand? A. That is correct.
- Q. Do you sell batteries to Texaco stations? A. If we do, it is \* \* \* strictly on a pickup basis.
- Q. What would be the categories of products you sell to Texaco stations? A. I still would like to have our salesmen, who contact those accounts, answer that.
- Q. What about Conoco stations? Do you sell tires to them? A. No.

(3546) MANNIE O. HANSEN was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

### Direct examination by Mr. Boyd:

- Q. Mr. Hansen, will you tell us what your full name is?
  A. Mannie O. Hansen.
- Q. What is your business? A. I am a salesman for Storz Supply Corporation.
- Q. How long have you been employed by Storz Supply Corporation? A. Twenty years.
- Q. How long have you been a salesman? A. Six years.
- Q. What is your sales area, Mr. Hansen? A. I cover Omaha and a radius of about 30 or 35 miles from Omaha.
- Q. What classes of customers do you call on in that area? A. I call on service stations, garages, car dealers, fleets.
- Q. You sell the products of the Storz Corporation? A. Yes, sir.

### Mr. Royall: Had he finished his answer?

#### By Mr. Boyd:

- Q. Did I interrupt you? (3547) A. No.
- Q. Are there any Texaco stations in your sales area?

  A. In my sales area? Yes, there is.
- Q. How many? A. On the territory that I cover there are 16, approximately 16.
- Q. Do you solicit—do you do business with the 16? A. I do business with about 8 of the 16.
- Q. What about the other 8? A. I don't solicit them regular enough, the other 8, due to the number of accounts I have to call on, and I can't possibly get around to see all the 16.

Q. Do you solicit them at all, the other 81 A. No.

Q. Have you ever done so? A. The other 8? No I haven't.

Q. You say you do business with 8 of them? A. That's

right.

Q. Can you tell us who they are? A. Yes. I have the list. We have the Ed Schulte Texaco Service, at 61st and Military.

Q. What do you sell him? A. He buys quite a bit of merchandise, on mostly a pick-up basis from our store, which is right across the street from him. He buys some Victor gaskets, Harrison thermostats, Heet.

(3548) Q. What is that? A. That is gasoline antifreeze to add to your gas to absorb the moisture in the tank.

Q. What else! A. He occasionally buys Gates belts, Gates mats, sealed beams.

Q. What brand of sealed beams? A. Ever Ready; Prestone, McQuay valves, Niehoff points and condensers, tubes.

Q. Tire tubes? A. Inner tubes. Yes.

Q. We are interested in TBA products. A. He picks up some Delco batteries from us, some Corn Belt tubes.

Q. Is that the brand name, Corn Belt? A. Yes. Fram filters. I don't believe the rest of it would pertain, outside of Gates belts and Gates hoses and (3549) Weed chains.

Mr. Barton: Didn't you say radiator chemicals? The Witness: Yes, anti-rust and water pump lubricant, made by Prestone.

Q. Is all of this pick up or part of it? A. Practically all of it is pick up.

Q. Does he pay cash for that or is that on a charge account? A. Some charge, and the bulk of it is cash.

Q. Could you give us some idea of what his volume would be a year, or a month? A. Well, yes. From January, 1956, to January, 1957, it approximately ran \$510.

Q. Did you sell him any tires? A. On a pick up basis,

yes.

- Q. Do you have any idea of how many tires you sold him that year, 1956? A. It wouldn't be over two or four at the most.
  - Q. Batteries! A. Batteries.
- Q. Do you have any idea of how many of those you sold him?—A. I haven't any idea, no. It would be in the file, but I don't approximately know exactly the number of batteries he has purchased.
  - Q. Does he openly stock your tires? A. No, sir.

(3550) Q. How about batteries? A. No, sir.

- Q. Does he have them in his station at all that you know of? A. No, not that I know of. He doesn't stock. Like I say, he doesn't stock any batteries. He gets them as his customers demand them.
- Q. Do you know whether that is a leased station or independent station? A. Leased station.
  - Q. What about the next one? A. Art's Texaco Service.
- Q. Where is it located? A. 405 East Locus, Carter Lake, Iowa.
- Q. What TBA products do you sell him? A. Tubes, Corn Belt tubes. Tubes, Heet, and he bought a set of Weed chains. That is about the extent of it.
- Q. What has his volume been? A. The only thing I can tell us is from August through December 31, 1956, it was \$153.
  - Q. 1956! A. Yes.
- Q. These Corn Belt inner tubes, does he display those in (3551) station? A. Right. Yes, sir.

Q. How many of them has he bought from you? Do you know? A. I would imagine about approximately 48, I would say.

Q. Do you know what tires he carries? What line of

tires! A. Firestone.

Q. Batteries? A. Firestone.

Q. What kind of station is it? A. Texaco.

Q. Does he own the station? A. He owns the station.

- Q. Going back for a moment to Mr. Schulte's station, at 61st and Military, does he carry tires in the station? A. Yes.
  - Q. Batteries? A. Yes.

Q. What line? A. Firestone.

Q. Both of them Firestone! A. Both Firestone, both tires and batteries.

Q. Now, the next station? A. That would be Eckberg and Bobbett, 86th and Dodge.

Q. What TBA products do you sell him? A. We sell him in TBA—we have sold him some Zerol, (3552) cooling system conditioner, Champion spark plugs, Trek antifreeze, Prestone, Every Ready bulbs, one or two Gates belts, and two Fram cartridges.

Q. Over what period of time are you telling us about?

A. January 1 through December 31, 1956.

Q. Did you finish the list! A. Well, as far as TBA items. We have Weed chains—he bought some Weed chains and CD-2 Alemite concentrate, some Hinson spring air cushions and some equipment.

Q. Have you sold him any tires! A. Tires!

Q. Yes. A. No, sir.

Q. Batteries? A. No, sir.

Q. Does he carry tires and batteries? A. Yes, sir.

Q. What line does he carry? A. Firestone.

Q. Both batteries and tires? A. Both tires and batteries, yes, sir.

Q. Does Firestone sell accessories? A. I believe they

do, yes, sir.

Q. Do you know whether or not Ekberg and Bobbett buy Firestone accessories? (3553) A. Yes, sir.

- Q. Do you know which ones he buys from Firestone? Accessories, that is? A. Practically all that they have, I believe.
- Q. Do you have any idea about the volume of business of this one? A. That we do with him?
- Q. Yes. Bobbett. A. From January 1 through December 31, it ran approximately \$365.

Q. Do they own that station? A. I couldn't answer that for sure, whether he owns that or whether he leases it.

- Q. Have you endeavored to sell tires and batteries to these three stations that we have gone through so far? A. Yes, sir.
  - Q. What reasons have been given-

Mr. Royall: Objection.

Hearing Examiner Kolb: Reasons, if any.

#### By Mr. Boyd:

Q. What reasons, if any, have been given?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. Do you want it one by one or an over-all opinion?

## (3554) By Mr. Boyd:

Q. Let's take it one by one. Ed Schulte first. A. There wasn't any particular statement issued why he wouldn't stock Century tires. There was no reason at all.

- Q. He didn't give you any reason? A. No, he didn't.
- Q. On that one, before you leave it: Does he have Firestone accessories? A. I believe he does, yes.
  - Q. Art's Texaco! A. Art's Texaco-
  - Q. Has any reason been given you there?

Mr. Royall: Objection. Hearing Examiner Kolb: Overruled.

A. Yes. He stated that he didn't live—he wanted to stay with a nationally advertised brand, like Firestone—that is the reason he gave for not stocking Century. That is all I can tell you about that boy.

## By Mr. Boyd:

Q. I may have misunderstood you. Did you mean he wanted to stay with Firestone? National brand? A. That is what I meant to say. Yes.

Ekberg and Bobbett told me that we couldn't sell him.

(3555) A. We couldn't sell him tires due to the fact that he can buy them a lot less at Firestone than he could through us.

Q. Does Art's Texaco, the second one you mentioned, carry Firestone accessories? A. Yes, sir.

Q. What about the next Texaco station? You gave two. A. We have three. I have one, Ted Carroll Texaco, at Valley, Nebraska.

Q. What do you sell him in TBA† A. We have sold him, I believe, four tires recently. We sell him Zerol cooling system sealer and conditioner; we sell him usually a case or two of Prestone a year; Ever Ready bulbs, chain adjusters, Ever Ready flashlights, Wagoner brake cylinder parts. That pretty well covers the TBA.

- Q. How about batteries? Did you ever sell him batteries? A. No, sir.
  - Q. You don't endeavor to sell him any? A. No, sir.
- Q. What about these tires? You say he bought four recently. Had he bought any before that? A. No, sir. The four he bought were mud and snow tires. Olympian mud and snow tires.
  - Q. Does he handle tires and batteries? A. Yes, sir.
  - Q. What brand? (3556) A. Firestone.
- Q. Do you have any idea about the volume of that account last year? A. Well, I would judge approximately around \$300.
  - Q. Does he own that station? A. He leases.
  - Q. Have you endeavored to sell him tires? A. Yes, sir.
  - Q. What reason, if any, did he give you for not buying?

Mr. Barton: Objection.

Mr. Royall: Objection. He said he bought them. Hearing Examiner Kolb: Overruled.

#### By Mr. Boyd:

- Q. Go ahead. A. Yes, I said he bought four mud and snow tires, that is correct. But as a stocking purpose, any quantity, no.
- Q. I am not sure I got an answer to the last question, if he gave you any reason for not buying. You said he didn't carry any quantity on hand. Did he give you any reason?

Mr. Royall: Objection. Hearing Examiner Kolb: Overruled.

A. No specific reason outside of the fact that he felt he was obligated to buy the bulk of his purchases through Firestone.

#### (3557) By Mr. Boyd:

Q. The next station? A. The next station would be J and H Service, 90th and Maple Streets.

Q. What do you sell him on the TBA line? A. Delco battery, Fram filters, I sold him a couple of tires, Weed chains, Prestone, thermostats, Lubaidet, Zecol cooling system conditioner and sealer.

Q. This covers the year 1956? A. It covers April through December, yes sir.

Q. What was the volume, about? A. That ran approximately \$783.

Q. How many batteries did you sell him? A. I couldn't offhand say how many batteries I did sell him.

Q. Does he openly carry the batteries in his station? Openly display them? A. I believe he buys those on a pick up basis. He doesn't stock too many Delco batteries in the station.

Q. Have you ever seen them on display there? That is, the Delco batteries? A. That is pretty hard to say, whether I have ever seen them on display.

Q. Does he openly stock Prestone? (3558) A. Yes. Incidentally, he is an individually owned station, I might add.

Q. Does he carry tires in stock, and batteries? A. Yes.

Q. What brand or brands? A. I don't know exactly what brand his tires are; it is not any of the "big four".

Q. How about batteries? A. Mostly Grant batteries.

Q. What about the next station that you sell to—Texaco. We have had five. A. There is Jensen Brothers Texaco.

Q. Where is he located? A. 1926 North Second.

Q. What TBA products have you sold him? A. I can't tell you that because all that he has purchased he has bought from the store, our store in Benson.

Q. How many places of business does Storz Supply Corporation have? A. All over?

Q. In the whole trading area? A. That we cover?

Q. Yes, sir. A. I believe it is ten branches. Eleven branches, including Benson. That would be the 11th one.

(3559) Q. That pick-up business that has been done by Jensen Brothers, is that cash or credit? A. Cash.

- Q. Do you have any idea about the volume of business? A. I think I can probably give you an idea. September through November is \$11.60.
  - Q. Is that 1956? A. Yes, sir.
- Q. Does he own that station? A. I believe that is a leased station.
- Q. Does he carry tires, batteries? A. I wouldn't know. Like I say, I never had solicited so I wouldn't be able to answer that question.
  - Q. What about the next station? A. Pearson Texaco-
  - Q. How do you spell that? A. P-e-a-r-s-o-n.
  - Q. Where is it located? A. 5401 Military.
  - Q. Did you solicit his business? A. Yes, sir.
- Q. What did you sell him in the TBA line? A. In the TBA line we have sold him a couple of Delco batteries on adjustment. Mostly mufflers, tail pipes—Walker mufflers and tail pipes, fuel pumps—AC fuel pumps, Delco (3560) shock absorbers.
  - Q. Does he carry tires? A. Yes, sir.
  - Q. Batteries? A. Yes, sir.
  - Q. What line of tires? A. Firestone.
  - Q. What about batteries? A. Firestone.
- Q. How about accessories? Firestone accessories? A. Yes, sir.
- Q. Does he own that station? A. I believe that is a leased station.
- Q. Have you end avored to sell him tires and batteries?

Q. How about the next station, Mr. Hansen? A. That I sell?

Q. Yes. Texaco. A. There is Whitney's Texaco, 7051

Dodge Street.

(3561) Q. What TBA products do you sell him? A. I don't sell him any. That is another account that comes to the store and purchases. He has, however, picked-up some Champion plugs, in the TBA line, and ignition parts.

Q. Do you have any idea about the volume of that one?

A. March through June it was \$28.50.

Q. March to June, 1956? A. Right.

- Q. Does he own the station? A. I believe that is a leased station.
- Q. Does Whitney's carry tires and batteries? A. I can't answer that because I have never called on the man. All I can go by is what he picked up at the Benson store.

Q. Do you have any other Texaco accounts? A. I have several others on my territory that I don't solicit, yes.

Q. How many others are there? I think we have that you have gone through. A. There is possibly 8 or 9 more.

## (3562) By Mr. Boyd:

Q. How many Conoco stations are in your sales territory, Mr. Hansen? A. I would say approximately 8.

Q. How many do you sell? A. Well, regularly I sell two. We have sold approximately four or five out of the eight at one time or another.

Q. These two that you sell, will you tell us about them? A. One is in Arlington, Nebraska. That is Arlington Oil.

Mr. Royall: Your Honor, we have a standing objection to these.

Hearing Examiner Kolb: The record shows that.

A. At Arlington, Nebraska.

## By Mr. Boyd:

Q. What do you sell him in the TBA line? A: Practically—I would sell him Delco batteries, Fram oil filters, Gates belts and hoses, Ever Ready bulbs, Lubaidet, AC fuel pumps, Walker mufflers and pipes, Niehoff ignition, Wagoner brake fluid, Victor gaskets, carbureters, and there is quite a few other items we sell.

Q. How about tires! A. Don't sell him any tires. No,

sir.

Q. Does he own that station? A. He owns that station.

Q. What is the name of the Conoco station that you sell (3563) regularly? A. That is Jerry's Conoco Service.

Q. Where is this located? A. 7009 Military, it is now.

Q. This is in Omaha? A. Right. Omaha, Nebraska.

Q. Does he own that station? A. No, sir. He leases.

Q. What TBA products do you sell him? A. We have sold him some Champion spark plugs, some Zecol Carb-Aid, some Gates hose, Weed chains, Walker silencers.

Q. Is that a muffler? The silencer. A. The—a muffler, yes. Harrison thermostats, Victor gaskets, hose clamps—

Edeal hose clamps—CD-2 Alemite, heater hose.

Q. Are you finished? A. I am trying to find a few more TBA, with the exception of this equipment here. That is about the extent of it, I believe. I thought that we sold him some filters, Fram filters, too, at one time.

Q. Your papers do not show that? A. Not without

checking the records I wouldn't be sure, no sir.

Q. Does Jerry's carry tires! A. Yes, sir.

(3564) Q. What line? A. I believe it is Goodrich.

Q. How about batteries? A. I believe those are Goodrich.

Q. Does he carry Goodrich accessories? A. Some, yes.

#### By'Mr. Boyd:

- Q. I believe there are six other Conoco stations in your sales territory. A. I believe that is correct. Very close to that.
- Q. Have you ever sold them? A. Yes, we have sold several of them a little merchandise. (3565) There again it is mostly they came to the store, mostly on a pick up basis.
- (3566) LAWRENCE B. TAYLOR was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

## Direct examination by Mr. Boyd:

- Q. Will you please state your full name? A. Lawrence B. Taylor.
- Q. What is your business, Mr. Taylor? A. I am the South Omaha branch manager and salesman who travels out of that particular territory.
  - Q. For what company? A. Storz Supply Corporation.
- Q. How long have you held that position? A. I have been in South Omaha since 1943. But I worked for the firm before at another branch at Red Oak. Part-time I started in June 1938 and went on full-time in June 1941, I believe.
- Q. Do you travel in this sales territory that you have at present? A. Yes.
- Q. Could you define it a little more for us, geographically speaking? A. I travel everything south of Vinton Street, in South (3567) Omaha, south as far as Plattsmouth, and west as far as Ashton.
- Q. How long have you been—I believe you said six years in this territory! A. No. I have been there since 1943, in South Omaha.

- Q. What class of customers do you call on? A. I call on car dealers, independent dealers, fleets, a few contractors and service stations.
- Q. Are there any Texaco stations in your sales area? A. Yes.
  - Q. How many? A. I believe there are nine.
  - Q. Do you sell any of them? A. Yes.
  - Q. How many? A. Approximately five.
- Q. Let's take them one by one. What is the first one?

  A. I call on Cress Texaco in Bellevue.
  - Q. K-r-e-s-s? A. C-r-e-s-s.
- Q. What TBA products do you sell him? A. I do not sell him any tires or batteries. I sell him mufflers, points, garage equipment; car washing soap, windshield wash tissue, towels, thermostats, points, condensers.
- Q. Does that station carry tires and batteries? (3568)
  A. Yes.
  - Q. What line does it carry? A. Goodrich.
  - Q. Batteries, too? A. Yes.
- Q. How about accessories? A. Yes, they have a full line.
  - Q. Goodrich? A. Yes.
- Q. Does Mr. Cress own that station? A. No. He leases it.
- Q. What is the next station? A. I call on R&R Texaco station at 33rd and Q, South Omaha.
- Q. What do you sell them in TBA? A. No tires or batteries. I do sell him a tube now and then on a pickup basis. I sell him a lot of brake parts, mufflers, light bulbs, a few spark plugs, tube repair, tire repair material, and some equipment such as car washing soap, tire cleaner line. That is about the extent of it.
  - Q. Does that station carry tires and batteries? A. Yes.
  - Q. What line of tires! A. Firestone.

- Q. Batteries? (3569) A. Firestone.
- Q. Accessories? A. Yes.
- Q. Firestone? A. Full line.
- Q. Do you know whether the operator of that station owns it? A. No. He leases it.
- Q. What is the next station? A. I call on Harley Fisher Texaco, 24th and G. South Omaha.
- Q. What TBA products do you sell him? A. I sell him oil filters. That is the extent of it as far as TBA. "Once in awhile a fan belt. I sell him—I sold him jacks, battery testing equipment, battery chargers.
  - Q. Does that station carry tires and batteries? A. Yes.
  - Q. What line of tires and batteries? A. Firestone.
- Q. Does Mr. Fisher own that station? A. No. He leases it.
  - Q. The next station? A. George Peers, 42nd.
  - Q. P-e-e-r-'-s? A. Yes, 42nd and L.
- Q. What do you sell him? (3570) A. I sell him spark plugs, mufflers, tail pipes, thermostats. Now and then a battery. If he doesn't happen to have one in his stock he buys one from me. I sell him fan belts and of course a line of garage equipment. If he is in the market for a jack or charger I usually get a chance to sell it to him.
- Q. Does Mr. Peer carry tires, batteries and accessories?
  A. Yes.
- Q. What line? A. He carries Firestone tires and Grant batteries.
  - Q. Does Mr. Peer own that station? A. Yes, he does.
- Q. How about accessories? Do you know what line of those he carries? A. He carries the full line of accessories.
- He carries AC filters. He doesn't stay with any one particular brand of accessories. He takes what he feels is the best one and handles that one.
  - Q. That is four. You sell one more. What is the name of that? A. Fred Tex, on 60th and L.

Q. What products do you sell him on TBA! A. I sell him everything in the book from batteries. I don't sell him any tires. He doesn't sell tires. I sell him filters, fuel pumps, batteries, points, condensers, (3571) mufflers, tail pipes, clutches.

Q. Does Fred own that station? A. Yes, he does.

Q. What about the other four Texas stations in your area? A. I have one that was a brand new one, that was just opened. He was in business two months. They followed up this week.

Q. Where is it located? A. In Ralston.

Q. Nebraska? A. That is right.

Q. Do you know the name of it? A. Beaver Texaco.

Q. You say it was just opened two months? A. Two months. It folded up this week.

Q. Did you call on that station when it first opened? A. Yes, I did. I lived within five blocks of there and bought a lot of gas there. But he couldn't buy a thing from me. He wanted to stay strictly with TBA.

Q. What TBA did he have?

Mr. Royall: Wait a minute. Read that question and answer.

(Question and answer read.)

Mr. Royall: We move to strike the answer. It is not responsive.

(3572) Hearing Examiner Kolb: The motion to strike will be denied.

## By Mr. Boyd:

- Q. Do you know what line of TBA he had? A. Firestone,
- Q. Mr. Taylor, as to Chris' Texaco Station, did you endeavor to sell tires and batteries and accessories to them?

  A. Yes.

Q. Was any reason given you for not selling him?

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. He told me he had a contract with Frost and was to buy everything there that he could.

## By Mr. Boyd:

Q. Do you know the full name of Frost? A. Frost Tire and Battery, I believe is what comes on the heading of their invoice.

Mr. Royall: Let me ask counsel a question. Is that the same one you asked about before—Cress?
Mr. Boyd: Yes, sir, Cress is the one I am asking about now.

Mr. Royall: Didn't you ask earlier about that? Mr. Boyd: Yes, but I didn't ask this question.

#### By Mr. Boyd:

Q. Do you know the line of TBA that Frost sells? (3573) A. Yes.

Q. What is it? A. Goodrich.

(3574) Q. When did you find out that Cress had a contract with Frost?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. When he first opened the station and I made my first call upon him.

Q. Do you know when that was? A. That was about approximately October 1.

Q. What year? A. 1956.

Q. How soon did you call on Mr. Cress! Did you see him call on Mr. Cress! Did you see him before the station opened, or afterwards, or when! A. The first day he was opened.

Q. Did he have any stock of TBA in there then? A. They were in the process of putting it in when I called.

Q. What about R&R Texaco at 33rd and Q? Did you endeavor to sell tires, batteries and accessories to him? A. Yes.

Q. Did he give you any reason for not buying?

Mr. Royall: Objection. Hearing Examiner Kolb: Overruled.

A. He told me he was tied up with Firestone and he was

to buy his purchases from them.

(3575) Q. What about Harley Fisher? Did you endeavor to sell tires, batteries and accessories to him? A. Yes.

Q. What reason, if any, did he give you for not buying?

Mr. Royall: Objection.
Hearing Examiner Kolb: Overruled.

A. That he was just supposed to buy from Firestone.

Mr. Royall: Motion to strike.

Hearing Examiner Kolb: Are you saying what he told you? What did he say to you?

Mr. Royall: Objection.

The Witness: That he was supposed to purchase his products from Firestone.

Mr. Royall: Motion to strike.

Hearing Examiner Kolb: Objection to strike; motion to strike denied.

## By Mr. Boyd:

Q. Do you know who handles Firestone here, Mr. Taylor? A. No, I don't. It is handled through the Firestone store, I know that. They have a store in South Omaha. They service out of there.

Q. What about Conoco stations? Do you sell them? A.

I have three.

Q. How many in your area? A. Three, I believe.

(3576) Q. Three, and you sell three? A. No—well, we sell him some items. We don't sell him any amount.

Q. Tell us about each one of them. What is the first one? A. Frank Calta—

Q. How do you spell it? A. C-a-l-t-a.

Q. Where is he located? A. 24th and G.

Q. What did you sell him in tires, batteries and accessories? A. I do not sell him any tires or batteries. Now and then a tube. I sell him mufflers, tail pipes, thermostats, battery cables, car washing soap, tire gauges. Most of the items I sell him is because I am close and I have a truck that I can perform jack-rabbit service with, and he calls me up and we deliver immediately.

Q. Does Mr. Calta carry tires and batteries? A. Yes,

he does.

Q. What line? A. Goodrich.

Q. Accessories, too? A. Yes.

Q. Does he open that station? A. He leases.

Q. Have you endeavored to sell him tires, batteries and (3577) accessories? A. Yes, I have.

Q. What, if any, reason did he give you for not buying? A. Their Conoco firm is tied up with Frost and he should make his purchases there if at all possible.

Mr Barton: Move to strike.

Hearing Examiner Kolb: Motion to strike denied.

#### By Mr. Boyd:

Q. Did he tell you this? A. Yes.

Q. What is the next Conoco cation? A. Nieto-N-1-e-t-o.

Q. Where is he located? A. He is on 33rd and Q.

- Q. What have you sold him? A. I personally haven't sold him anything. His purchases have been—when he runs into the store and picks it up, or calls us up we deliver.
- Q. Do you have any idea what he buys or has been buying? A. Yes. "I have called on him but I have never been, able to sell him. He buys Goodrich.
  - Q. Tires, batteries and accessories? A. Yes.

Q. Does he own the station? A. No, he leases.

(3578) Q. What reason, if any, has he given for not buying from you tires and batteries? A. He didn't give me any reason at all.

Q. Do you have another Conoco station? A. Yes, we

have Dean's.

Q. D-e-a-n-'-s Conoco' A. Yes.

Q. Where is he located? A. 42nd and L.

Q. Have you sold him any TBA!, A. No.

Q. Does he have TBA in stock? A. Yes.

Q. What line? A. He handles mostly the Goodrich line.

Q. Does he own that station! A. No, he leases it.

Q. Have you endeavored to sell him? A. Yes, I have.

Q. What reason if any has he given for not buying?

Mr. Banton: Object.

Hearing Examiner Kolb: Overruled.

A. That Conoco had their own TBA and he preferred to stay with it.

I have since ceased calling on him because it was

(3579) a waste of my time and his, too.

## By Mr. Boyd:

- Q. Are there any other Conoco stations? A. I have a new one.
- Q. Where is he located? A. Sunshine Addition, 36th and Madison.
- Q. Is that a street? A. It is an addition. At 36th and Madison.
- Q. Do you know the name of it? A. Grims Sunshine Conoco.
- Q. When you say "addition", do you mean a new street? A. It is a new area that started up with all new homes. They put this neighborhood Conoco in it.
- Q. How long has he been in there? A. He opened up about the 20th of November.
  - Q. 1956? A. Yes.
- Q. Have you sold him any TBA? A. The only thing I have sold him has been chains and some garage equipment.
- (3582) PERCY L. KANAGO was recalled as a witness for the Commission and, previously having been duly sworn, was further examined and testified as follows:

Hearing Examiner Kolb: Let the record show Mr. Kanago recalled for cross-examination.

## Cross-examination by Mr. Royall:

- Q. Mr. Kanago, there are in addition to your company a number of other wholesalers who cover the same territory, are there not? A. In our type of business.
  - Q. Yes, in your type of business? A. Yes, sir.
- Q. As a matter of fact, as appears from the telephone book also, there are quite a number of them, aren't there? A. Yes, sir.

Q. Some of them large, some of them small, but all in all there are a great many people who call on the various (3583) service stations to try to sell them, are there not?

A. Yes, sir.

Q. And some of the people who call on them of course

do not succeed in selling them, is that correct?

Mr. Boyd: I object to that, your Honor, as not being within the witness' knowledge as to what other people do. He can testify as to what he does.

Hearing Examiner Kolb: The objection will be

overruled.

Mr. Royall: I will withdraw that question, your Honor, pending another.

# By Mr. Royall:

Q. You do know, do you not, sir, that the stations don't buy from all the wholesalers, don't you? You know that

from your observation? A. I can assume that, sir.

Q. These gentlemen who work for you and who testified in this hearing did not mention all of the Texaco stations that you sell, did they? A. They mentioned I believe, sir, the Texaco stations that they actually contacted or those that were in their assigned areas.

Q. Yes, sir, but are there other areas not covered by

these salesmen? A. Oh, indeed.

(3584) Q. Would you be kind enough to let me ask you some questions about some of the Texaco stations which you sell which were not covered by these witnesses? And would you give me your best information on it? A. If I can.

Q. I understand, if you can. Are you familiar with the fact that your company sells TBA items, including spark plugs and batteries, to John Crookham, at Main and Pearl at Council Bluffs, and sells in amounts running from \$50

to \$100 a month? Are you familiar with that? A. Counsel, I know that we sell the account. But for me to tell you exactly what we sell him and in what amounts, I couldn't.

Q. I am just asking what you do know. A. I recognize the account. But what we actually sell them, though, I can't.

- (3590) Q. Getting back to Ed Goldapp, at 60th and Center, who sells him? A. Our salesman's name who calls on him is Charles Benson.
  - Q. He is not here? A. He is not present.
  - Q. You do sell him merchandise? A. Some, yes.
- Q. Don't you know that in that case he is also sold by Anderson and Sidles?

The Witness: I can only assume that they do. I don't call on the account and have never seen their salesmen present.

#### By Mr. Royall:

Q. How about Weigle & Young Service Station, 964 South (3591) 48th Street A. That is right.

Q. Who handles that? A. Contacted by our Mr. Benson.

Q. They buy from you also! A. Yes, sir.

Q. And they buy from other suppliers, do they not, too? A. Of course.

Q. They buy from Sidles and Anderson, do they not?

Mr. Boyd: Object, unless he knows.

A. I couldn't say sir. I don't know.

# By Mr. Royall:

Q. You don't know whether they do or not? A. I don't know whether they do purchase from them.

Q. Do you know whether or not they buy from Adolph's

Auto Supply Company? A. Yes, that I do know.

- Q. And they buy also, do they not, from the Jones Auto Company? A. It is Jones Automotive. I do not know again whether or not he buys from them.
- (3592) Q. There are other accounts, are there not, that are not covered by these gentlemen who have been on the stand? A. Do you mean by that are there other Texaco or Conoco stations in the area that our whole organization covers? A. That is right.

Q. Yes. A. Yes, sir.

Q. Can you tell us offhand how many there are? A. No, sir, I couldn't.

Mr. Royall: That is all I care to ask you.

### Cross-examination by Mr. Barton:

(3593) Q. What percentage of your business is pickup business in the store? A. That is a very good question. We would all like to know the answer to it.

Q. What roughly is it! Is it 50 percent of your volume!

A. No, I would say that it probably would vary between

20 and 30 percent.

(3594) Q. And of course— A. Actual pickup over the counter.

Q. It is heavier among the service stations than it is among the garages and people like that? A. For the resson that there are probably more service stations than there are garages.

#### Mannie O. Hansen, Recalled, for Commission-Cross

Q. Also the service stations are not all too well capitalized, so they don't carry a complete stock?

Mr. Boyd: Object to that. Hearing Examiner Kolb: Objection overruled.

## By Mr. Barton:

- Q. Right? A. Call it a hand to mouth basis.
- Q. Pardon? A. Call it a hand to mouth basis.

(3597) MANNIE O. HANSEN was thereupon recalled as a witness, and, having been previously duly sworn, testified further as follows:

## Cross examination by Mr. Royall:

Q. Mr. Hansen, you agree that there are a good many wholesalers around this territory, are there not? A. That's right, sir.

Q. And no one knows that better than another whole-

saler. A. You are right, sir.

Q. Competition between them is pretty keen, isn't it? "

A. Very keen.

Q. You find, do you not, that in a great many stations, including those that you testified about, that in addition to these stations buying from you they buy from other local wholesalers, do you not? A. That is correct.

Q. And in many instances you have observed their

products in the station, have you not? A. Right.

Q. Without going into great detail about it, I would like to ask you about a few that we have— A. All right, sir.

(3598) Q. (continuing) —from general information from the other witnesses previously heard in this hearing.

#### Mannie O. Hansen, Recalled, for Commission-Cross

You know the Art's Texaco station, I believe you testified about that. A. Yes, sir, I testified about Art's Texaco.

- Q. I believe they sell Siberling tires. A. Art's Texaco?
- Q. Yes. A. They had Siberling tires at one time, yes.
- Q. They buy from Sidles do they not? A. I would presume so. Handling Siberling tires I would imagine that is where they got them from.
- Q. Also, they handle Delco, do they not? A. Alter that.

  They used to buy Delco.
- Q. You have seen Delco in there! A. Yes, sir, I have seen Delco in there.
- Q. Mr. Ekberg, is he the one who is related to the Firestone zone manager? A. I wouldn't know that, sir.
  - Q. You wouldn't know that? A. No.
- Q. No, I believe he is an ex-Firestone manager, isn't he! A. I believe that was it. He used to have a Firestone store out in Benson. That is where I first got acquainted with him.
- (3600) Q. I believe you covered a witness named Ted Carroll, did you not? A. Ted Carroll, of Valley.
- Q. Am I correct that he is in bad financial circumstances? A. He is not in the best financial circumstances.
- (3601) Q. You do know, do you not, that Pearson buys from Sidles do you not? A. I would assume that he would, yes. I know they call on the account. I am just assuming that Pearson probably does buy something from Sidles.

Cross-examination by Mr. Barton:

## Mannie O. Hansen, Recalled, for Commission-Redirect

(3602) Q. I didn't have it in my notes. You also call on Arlington Oil? A. Yes, sir.

Q. I believe you said you didn't sell tires there? A. No,

sir.

Q. Have you ever tried? A. Yes, sir.

Q. What reason, if any, was given to you? A. He wanted to stay with a national advertised line.

Q. And your line is what? A. Century.

- Q. That is not a nationally advertised line. A. It is manufactured by Mansfield Tire and Rubber Company.
- Q. But it isn't nationally advertised in the same sense as Firestone or Goodrich? A. Not in as great a quantity, no.

## Redirect examination by Mr. Boyd:

Q. Mr. Hansen, I believe the questions were asked you about Art's Texaco on cross-examination, and you said that at one time they had Siberling tires. A. That's right.

(3603) Q. When was that? Do you recall? A. Well, it has been this year. I would say along about August, September, or October. Somewhere along there. Maybe earlier. I don't know.

Q. 1956† A. 1956.

Q. They don't have any any more! A. Not to my knowledge. They might have some that I don't know about.

Q. How about Delco batteries? You said they also used

to have them. A. That's right.

Q. They don't have them anymore? A. Not to my knowledge.

Q. When did they have them that you know about? A. That has been approximately a year or so ago. In fact I used to sell him some Delco batteries about one or two years ago.

Ldwrence B. Taylor, Recalled, for Commission-Cross

Q. Why did he stop buying Delco batteries?

A: I don't know why he stopped buying Delco batteries. I have no specific proof so I had better not say anything. I know about it, but I have no proof so I am not going to tell (3604) you what the setup is.

## By Mr. Boyd:

Q. Did he carry Siberling tires up to 1956? Did he regularly carry them or did you just see them that one time? A. Not normally as stock. He carried them, I believe, as a secondary tire. Primarily it is Firestone, but I think he carried Siberling as a second-line tire.

Mr. Royall: That is all, sir. (Witness excused.)

LAWRENCE B. TAYLOR was thereupon recalled as a witness, and, having been previously duly sworn, testified further as follows:

# Cross examination by Mr. Royall:

Q. Mr. Taylor, it is true of course, is it not, that these (3605) various service stations are approached by numerous wholesalers, are they not? A. That's right.

Q. And those that you have testified about have bought from others besides yourself, have they not? A. That's right.

Q. And they sometimes decline to buy from one and buy from another, don't they! A. That is very true.

## Lawrence B. Taylor, Recalled, for Commission—Cross

Q. When they don't buy from one they always have to give them some good reason, don't they! A. Well, there usually is a good reason.

Q. They give them one anyhow, don't they? A. Yes.

Q. They don't want to offend them and they give them some reason. A. That's right.

Q. Mr. Taylor, I want to ask you about several of these specifically: If you don't know, you just say so. A. I will.

Q. I want you to tell me what you know about it.

Do you know what other wholesalers Mr. Cress buys from? We have no record at all. A. I have never met one of my competitors there, so I can't tell. I do not—

(3606) Q. Could you tell from the type of goods that

you see? A. You mean in his place of business?

Q. Yes, sir. A. The only thing that I do know is that he buys from Frost. I have seen all of that type of merchandise there.

Q. But he does buy from others, too, doesn't he? A. Not to my knowledge.

- Q. Did you give in the case of Mr. Fisher the items that he bought from you?
- Q. Did you mention Weed chains in that case? A. No, I did not.
- Q. And did you mention Delco batteries? (3607) A. No, sir.
  - Q. Or Gates belts? A. I did belts.
  - Q. Or Zecol sealer? A. No. sir.
- Q. He did buy from you, did he not, Weed chains, Zecol rust stop, and a Walker jack, did he not? A. I sold him a front-end jack, and I sold him Zecol. To my knowledge I have never sold him a battery unless he has needed it for a specific purpose and has called and we have delivered it. For stocking purposes, I have never sold him one.

#### Lawrence B. Taylor, Recalled, for Commission-Cross

Q. You sold him Weed chains? A. Not to my knowledge. We had a bad snow storm awhile back and almost every service station in town bought chains from us because we had them and some other accounts didn't.

Q. Let me ask you something about Beaver. We have no record of that. He buys from Anderson and Sidles, doesn't he? A. I would presume he does. I wouldn't say for spre.

- (3609) Q. Did you say that you tried to sell tires to George Peers, 42nd and "L"? A. No.
  - Q. Pardon. A. No, I did not sell him tires.
  - Q. Did you say you tried to? A. Yes, I have tried to.
- Q. What reason, if any, did he give you for not handling— A. George has always been tied in with Firestone and he prefers to stay that way.
  - (3610) Q. He likes the Firestone line? A. On tires.
- Q. What kind of batteries does he handle. A. He handles Grant batteries.
- Q. Did you sell him any batteries? A. The only time. I sell him a battery is when he is caught and needs a battery for a particular automobile and he can call us and we would deliver, or run down to the store and pick it up.
- Q. Has he ever given you a reason for not buying your, batteries? A. Yes, he has. He told me that he bought Grant batteries during the war and Grant took care of him, so he felt obligated to them and he would stay with them as long as possible.

#### By Mr. Royall:

Q. Frank Cerny buys from Sidels, does he not? A. I presume he does.

(3611) JAMES S. ZALOUDEK was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

#### Direct examination by Mr. Dias:

- Q. Will you state your full name for the record? A. James S. Zaloudek, 5248 South 23rd Street, Omaha, Nebraska.
- Q. Mr. Zaloudek, did you at one time operate a Texaco station? A. Yes. In 1948 I opened a new station at 13th and Deer Park. That was July 24.
  - Q. How long were you in that station? A. Six years.
- Q. When did you say you opened in 1948? What date? A. The 24th of July.
- Q. When did you first negotiate for that station? (3612) A. That would have been in June.
- Q. Will you tell me what occurred in your negotiations?

  A. I signed a contract—

Mr. Royall: Wait a minute. When did this happen?

Mr. Dias: July, 1948.

Mr. Royall: Your Honor, that goes way back of the date of the specific occasions which were set in the pretrial hearing.

Mr. Dias: Let's not argue. The man left the station in 1954. I am bringing him up to date on it.

Mr. Royall: That is all right. You asked about 1948.

Mr. Dias: I asked when he started and he said July 24, 1948.

#### By Mr. Dias:

Q. What negotiations took place before you signed for your station?

Mr. Royall: Objection. Hearing Examiner Kolb: Overruled.

A. In June-that is what you want?

## By Mr. Dias:

Q. Before you signed the lease. A. Before I signed the lease, how did it come that I got to sign the lease?

Q. Yes. (3613) A. Okay.

Mr. Royall: Objection. Hearing Examiner Kolb: Overruled.

A. I worked for Super Service at the time at 18th and St. Mary's Avenue. It was in the fall of the year when Firestone first introduced their ice tire.

#### By Mr. Dias:

Q. I am talking about when you went to the Texaco office for the purpose of signing the lease. Did you not?

A. That's right. That was what I thought.

Q. What did they tell you at that time in connection

with this prospective lease?

Mr. Royall: Objection. Hearing Examiner Kolb: Overruled.

A. I went to the Texas Company and that was signed right at their office.

#### By Mr. Dias:

Q. Which Texaco officials were there?

(3614) A. At the time of signing the lease with Mr. Coleman, Mr. Sittler, Fred Opocensky.

Q. Did they at that time discuss the rate of rent? A.

Yes.

(3615) The Witness: That was right in the contract.

#### By Mr. Dias:

Q. Did they also discuss products to be carried in the station?

## By Mr. Dias:

Q. What was your answer to the last question? A. They explained the contract, rent, and their product that I would handle.

(3616) Q. Was there any conversation about tires, batteries and accessories?

#### By Mr. Dias:

Q. You may answer. A. They told me that I had a pick of two tires, and that was a Firestone Tire and Rubber Company or the Goodrich Tire and Rubber Company.

Q. Did that refer only to tires? A. That was to all

TBA products.

Q. And did you make a choice? A. I made a choice—Firestone.

Mr. Royall: Objection. Same grounds. Hearing Examiner Kolb: Objection overruled.

A. I made the choice of Firestone because I sold Firestone for Super Service.

## By Mr. Dias:

Q. How did you arrange to get your Firestone VBA into your station? A. I was told there would be a meeting—

(3617) Mr. Royall: Objection.

Hearing Examiner Kolb: What is the ground of your objection?

Mr. Royall: On the same grounds and also because it is hearsay.

Hearing Examiner Kolb: What are the same grounds?

Mr. Royall: I say that is an additional ground. Hearing Examiner Kolb: Let the record show that Mr. Royall has a continuing objection to each and every question asked and they are overruled.

Go ahead.

Mr. Royall: On the grounds stated?

Hearing Examiner Kolb: On the grounds so far stated they are overruled.

Mr. Royall: If there are any other grounds, I will state them at the time.

Hearing Examiner Kolb: All right. Go ahead.

A. They told me in a week or ten days they would have a meeting over at the Firestone place and I would be there at 8:00 o'clock. I signed a contract.

#### By Mr. Dias:

Q. Can you tell me who told you that? A. That was told to me by Mr. Sittler and Mr. Coleman.

(3618) Q. Go ahead. A. Then it would have been probably ten days when I appeared at 20th and Harney, Firestone Tire & Rubber Company.

Q. What date was that, approximately? A. That would have been probably the latter part of June.

Q. When did you open your station? A. July 24, 1948.

Q. Did you meet with them at Firestone? A. Yes, sir, right in the main office.

Q. What did you do at that time? Did you order a supply of TBA? A. I signed a contract with them for tires, Firestone tires and TBA that evening.

Q. When your station opened on July 24 were the tires, batteries, and accessories in your station or not? A. No. They were delivered by Firestone.

Q. When? A. That would be about a week before I opened.

Q. Before you opened? A. Before I opened. I had to

get everything on the shelves and properly placed.

Q. Did you at any time carry any other tires, batteries, or accessories? A. I bought—it would have been the same Fall of 1948 (3619) when I ordered Peak, Zerex, and Prestone, that my customers insisted on that type of antifreeze.

Q. Did you display them in your station? A. I dis-

played them in the window, all four products.

- Q. Which were the four? A. That was PT, Peak, Prestone, and Zerex. And when Mr. Sittler saw all that in the window I had to take it out—he told me to get rid of it, but I didn't. I put it in the back room. I never did take it out of the building. But I couldn't keep it in the window.
  - Q. Do you have your lease with you! A. Yes, sir.

Q. May I see it?

(The witness produced a document.)

Q. Do you want this back? A. Yes. Here is the cancellation.

Mr. Royall: May I request counsel, in these conversations, do you desire to name the persons with whom he talked?

Mr. Dias: I have attempted to do that so far. I think you have all the names to date. I would like to know them, too.

I would like to have this four-page document, marked for identification.

(3620) (The doctment referred to was marked Commission's Exhibit 154-A thru G for identification.)

#### By Mr. Dias:

Q. I ask you is this the lease that you executed with the Texas company? A. That's right.

Q. Including this document, marked 154-A? Is that all

part of it? A. That's right.

Mr. Dias: I offer the document in evidence, your Honor. I would like the record to show that the gentleman would like the return of the original. We would like to substitute a photostatic copy.

Mr. Royall: We have no objection to that.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 154-A thru G. A photostatic copy may be substituted in lieu of the original.

(The document previously marked Commission Exhibit 154-A thru G for identification was received in evidence.)

## By Mr. Dias:

Q. During the year 1948 did you purchase any other items, tires, batteries, or accessories, other than Peak, Zerex, Prestone, and other than the Firestone brand? (3621) A. About the following year, when I had customers calling for different types of filters and two grades of oil,

I ordered, such as AC, Purolator, Wix, Hasting filters, Kendall oil, and Pennzoil, and that, too, I could not display and I had to put it in the back room and they told me I had to take it out.

Q. Who told you? A. Mr. Sittler and Opocensky.

Q. Did you take it out of the display room? A. I took it out of the display room, put all the oil and filter cartridges in the back room.

Q. Thereafter did you place any more orders for Peak, Zerex, Prestone, or these other items you have mentioned? A. In the Fall of the year, customers still kept asking for it, so I ordered it.

Q. Did you also carry the comparable products in the Firestone line? That is, did you carry Firestone antifreeze? A. No. The anti-freeze I carried, none from Firestone; it was all Peak, from the Texas Company.

Q. Did you at any time carry other brands of tires or batteries? A. Yes.

Q. When did you do that? A. I carried—I didn't carry them, I bought them; I made a good price on some Armstrong tires purchased from (3622) Remde Tire Company.

Q. You started to tell us about the Armstrong tire situation. A. Yes. I purchased in the neighborhood of, I would say, about 48 to 52 tires. I made a good buy on them through Mr. Remde. They were delivered to the station and I put them in the rack with the Firestones that I had and I was told to remove those, too, which I didn't.

(3623) Q. Who told you to remove them? A. Mr. Sittler, Coleman, and Opoceneky.

Q. Did they tell you why you should remove them? A. They said "you have a Firestone contract and that is what you are supposed to have in our racks."

Q. Were there any other similar instances with any other products in the TBA line? A. In the TBA line I had merchandise purchased from Sidles Company and Al's Auto, Storz Supply. That, too, I was fold to take off the shelves, that they didn't want it there. But I never did take that off the shelves. That remained right there.

Q. Did you continue to purchase from those suppliers?

A. Yes.

Q. And those same products? A. Same products, because customers asked for it.

Q. Did your purchases over the years increase with those suppliers? A. Yes, sir.

Q. You bought more and more of their products? A.

I bought more and more and more.

Q. How about batteries? A. Batteries, after I had Firestones for I would say two to two and a half years, I signed a contract with Carl Anderson, George Hoffman, salesman, for Auto-Lite batteries. (3624) And that again I had to take out, and I went back to Firestone batteries.

Q. Will you explain what you mean by "had to take out"? Who told you to take them out? A. Sittler and Coleman didn't want them in the building, that I had a contract to sell Firestone and I had to sell Firestone bat-

terries.

Q. Can you tell me what your gas gallonage was over the years that you were with them? Did it vary? A. Overall for the six years that I had been there I would say it was over 18,000 average.

Q. Is that per month? A. A month.

Q. Did you start off by pumping that much gas? A. We started off by pumping I would say close to that amount, and picked up a little, and it stayed about right at that peak, about 18,500 a month.

Q. When did you leave, or when was your lease cancelled! Was your lease cancelled! A. I was cancelled out

to leave the premises July 24, 1954.

Q. Do you have a copy of the notification of cancellation? A. Yes,

Mr. Royall: Your Honor, from this point on I do not desire to carry the continuing objection, but will make (3625) objections specifically.

(The witness produced a document.)

Mr. Dias: May I have these marked for identification?

Mr. Boyall: That is the first item after 1952 that you asked him about?

Mr. Dias: I believe his story was running as he went along.

Mr. Royall: The last year he gave was 1949.

o Mr. Dias: We will go back over it again.

(The document previously referred to was marked Commission's Exhibit 155-A and B for identification.)

#### By Mr. Dias:

Q. I show you Commission's Exhibit for identification 155-A and B and ask you to tell us what that is. A. This is to advise me, "pursuant to the term of our lease with you dated May 18, 1948, covering service station site 13th and Deer Park, Omaha, Nebraska, Texas Company cancels and terminates said lease July 23, 1954."

Q. What is the date of the letter? A. That is July 2, 1954.

Q. And Commission Exhibit 155-B for identification, is this a copy of the cancellation of your lease! A. This also is a cancellation, yes, sir.

Q. Mr. Zaloudek, is this document, Commission's Exhibit (3626) 155-A and B—rather, is Commission Exhibit 154-A thru G the lease that you operated under with the Texas Company during your entire stay with the Texas

Company? A. That's right. I never received any other contract but that there one. That is the only one I signed.

Q. And this Commission Exhibit 155-A and B is your notice of cancellation? A. Yes.

Mr. Dias: I would like to offer these documents, 155-A and B in the record, with the request for permission to have them photostated and return the originals to Mr. Zaloudek.

Hearing Examiner Kolb: Is there objection?
Mr. Boyall: No. sir.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 155-A and B, and photostats may be made and substituted for the originals.

(The document previously identified as Commission Exhibit 155-A and 155-B was received in evidence as Commission Exhibit 155-A and 155-B.)

#### By Mr. Dias:

Q. Mr. Zaloudek, let's go back. In 1948 you purchased Peak, Zerex, and Prestone! A. That's right.

Q. From whom-

(3627) Q. Will you answer the question? In the Fall of 1948 you purchased Peak, Zerex, and Prestone? A. That's right.

(3629) Q. You purchased Peak, Zerex, and Prestone in the Fall of 1948, did you not? A. Right.

(3630) Q. From whom did you purchase that? A. From Storz Supply, Carl Anderson, Sidles, Al's Auto.

Q. When was the next time you purchased other than Firestone tires, batteries, or accessories? A. I would say it would have been in the year '51 when I purchased the Armstrong tires from Remde Tire Company.

Q. During the years between 1948 and 1951, were you purchasing these same products—Peak, Zerex, and Pres-

tone? A. Yes.

Q. Were you purchasing anything else in the TBA line?

A. In the TBA—

Q. Other than the Firestone brand. A. Yes. I was purchasing different makes of filters and TBA products.

Q. Were you on all those occasions chided by the Texas

Company? A. What?

Q. Were you told by the Texas Company not to carry those products? A. When they saw them on the shelves they said I wasn't supposed to have them on the shelves.

It was supposed to be Firestone.

Q. In 1952 what products did you buy, other than Firestone (3631) tires, batteries, and accessories? A. If a customer would want Goodyear tires, Seiberling, or whatever it might have been—U. S.—I purchased them, left them in the office intil the customer called for them or had them put on. And that again, when there was any other tire in our racks, or on the floor, they told me at the time that they did not want them in the building. And that was Sittler, Coleman, and Opocensky, the three representatives for the Texas Company.

Q. Did a similar occurrence come about during 1953? Were you purchasing other tires, batteries, or accessories from wholesalers or distributors other than Firestone? A. Around '53 I dealt exclusively, you might as well say, with Firestone, and the batteries. I went back to their batteries. But I still carried, say, waxes and filters and so forth from different companies. Our customers wanted them.

Q. Why did you revert to the Firestone line? A. Just to keep peace in the family.

Mr. Royall: Your Honor, we object and move to strike that, why he did it.

Hearing Examiner Kolb: Objection overruled.

Motion denied.

#### By Mr. Dias:

Q. In the early part of 1954 were you still carrying (3632) Firestone TBA exclusively? A. There was—

Q. Or were you carrying some accessories? A. There was more Firestone and Texaco; I would say that 92 percent of it was Firestone and Texaco.

Q. What constituted the other 8 percent? A. That would have been, say, chains, anti-freeze, filters, oil polishes, wax. It didn't amount to too much.

Q. Did you receive any notice prior to July 2 that your lease was going to be cancelled? A. I had an inkling that they were going to cancel me out.

Mr. Royall: Move to strike. Rearing Examiner Kolb: Denied.

A. I had an inkling I was going to be cancelled out for this reason: that one argument led to another about handling this merchandise since I was there, and as I say, I had an inkling they would cancel me out just for the reason of not being cooperative.

#### By Mr. Dias:

#### (3633) By Mr. Dias:

Q. Did anyone in the Texas Company tell you that your performance or your method of operation was unsatisfactory? A. No, sir.

Q. The first notification you received was that letter dated July 2? A. Cancellation.

Q. How were your gasoline sales at that time? A. Right up to par, as high as I thought they would ever go for a neighborhood station.

Q. Did a Texaco official ever give you any reason why you were cancelled out? A. Nothing was stated in the letter. About all I remember is opening the letter and saw the cancellation.

Q. Did you do anything about that? Did you attempt to— A. When I knew I was cancelled out I went to see if I could find another lease close by to protect the business that I built up for six years, which I was fortunate to find within a range of about three and a half or four blocks.

Q. During the time you were in that station, Mr. Zaloudek, (3634) did any Texas Company official ever tell you that you did not have to buy Firestone or Goodrich TBA? A. Nothing was ever said about that from the company. That was at the time that I was in my place of business.

Q. And by "the company" do you mean the Texaco Company! A. The Texaco Company; that's right.

Q. What became of the stock that you had in your station when you were cancelled out? A. The stock I had in the station I moved to my new location. They would not take Firestone tires, tubes, batteries back. The only thing that was returned and was paid for was the gasoline, oil, PT, and whatever had the name of Texaco on it.

Mr. Dias: That is all.

(3636) JAMES S. ZALOUDEK was recalled as a witness for the Commission and, previously having been duly sworn, was further examined and testified as follows:

## Cross-examination by Mr. Royall:

Mr. Royall: Your Honor, as we stated this morning, the first information we had that Mr. Zaloudek was to be a witness came to us after the morning's hearing started. We have naturally been unable to get in touch with the people he states he talked to, or to get the background or the position of the Texas Company officers or employees as to the great part of his testimony.

We have located some papers which will enable us to proceed with some examination of him, and we would like to go as far as those papers permit. But that is as far as we would be able to go with it today. I will start with it along that line. There are a few general questions we want to ask him which we can ask him. But there are a great many specific matters we are not in sufficient position to go into fully and we don't want to do it fragmentarily.

(3637) Mr. Dias: If your Honor please, it is our position they ought to undertake cross-examination now or postpone it until another date.

Hearing Examiner Kolb: He will cross-examine now and at the close you can make a motion and we will determine at that time whether it is to be extended or not.

#### By Mr. Royall:

Q. Mr. Zaloudek, I believe you testified that from time to time during your lease on the station, the Texas outlet, and for the period, among others which I won't ask you about, the period from 1952 on you from time to time

carried in your store TBA of brands other than Firestone?

A. That is correct.

Q. I think you further testified that immediately before the termination of your lease in July, when you got the first notice, 1954, that you had got to the point where you were selling 92 percent of your TBA in the Firestone brands? Is that right? A. Right.

Q. And that was an increased percent over what you

had been selling at some other times? A. Yes.

Q. What do you say was the lowest period of Firestone, that is lower than 92 percent, what was the lowest percent of Firestone you sold in 1952 and 1953 and 1954 up to (3638) July? A. That is carrying the other product, too?

Q. You said 92 percent of your products were Firestone and you said it had been lower than that. How low did it get at one time? Did it get to 60 percent Firestone? A. I would say 60 percent.

Q. And about when was that! In 1952? A. That would

be starting about 1952.

.Q. Then you moved up the percentage until finally in July it was 92 percent. Is that right? A. That is right.

Q. Do you recall a transaction in either 1952 or '53 involving some credit card purchases by a man named Saab? A. Yes, sir. I had to pay that back to Firestone Tire and Rubber Company by check.

Q. When did you pay that? A. I have no date here, but that was after termination. It was \$127.63. These

credit cards, photostats-

Mr. Royall: Your Honor, I don't want him to do any more than answer my questions unless it is an explanation. I just asked this question, a simple question.

#### By Mr. Royall:

Q. When did you pay it? You said it was after the cancellation? A. After the cancellation in July.

(3639) Q. This matter first came up—first came to your attention—this matter of these credit cards, credit sales, did it not, in August or September 1953? I am not trying to mislead you and I would be glad to give you something that would probably refresh your recollection if you need it. A. I have some dates here that might give me an idea. I can check the dates on these photostatic copies.

Mr. Royall: I am detaching this, gentlemen, from the file. I hate to detach it because it comes from the company.

The Witness: It seems as though it all happened in the eighth month, 1955.

#### By Mr. Royall:

Q. August 1953? A. From 1953 to-

Q. It was all in 1953, wasn't it! A. 1953, yes.

Q. Have you got copies of those credit cards? A. Yes, sir.

Q. You brought them up here, did you? A. Yes, sir.

Q. Were you asked to bring them up by government counsel? A. If what?

Q. Did these gentlemen, the attorneys for the government, ask you to bring those up here! (3640) A. I told them that I had them, that I was going to bring them.

Q. When did you tell them that? A. That was last night.

Q. How did it happen that you told them you were going to bring them? A. They wanted to know why I was cancelled out.

Q. Let me see those a minute, please? A. I told them it was probably due to—

Mr. Dias: There is no question pending, your Honor. I object to any response.

## By Mr. Royall:

- Q. You told them what? A. Go ahead, look at them.
- Q. You told them it was probably due to what? A. I told them I would bring those here.
- Q. What did you say a moment ago it was probably due to what? A. This case here.
- Q. These cards? A. No. It could have been that they cancelled me out either for this here, or that I didn't cooperate. That is why I brought them with me.
- Q. This matter was called to your attention in September 1953, shortly after these cards were issued? (3641) A. That is right.
- Q. It is a fact, isn't it, Mr. Zaloudek, that these cards, these credit cards were issued in part for tires that were not put on any car at your station? A. That is right.
- Q. It is also true, is it not, that there are cards in here of exactly similar amounts for different sized tires? A. Right.
- Q. It is also true, is it not, that these items, all items in addition to gasoline in the first three of these cards, are an even \$15? A. That is right. That is what the tires amounted to; marked "Miscellaneous."
- Q. Isn't this \$15 for tires? A. That is the size it should be, 6.40 by 15.
- Q. What is that? Is that for a tire? A. I would say yes.
- Q. And yet you put on that "Miscellaneous", didn't you? A. Yes, sir.
  - Q. Was this other one for a tire? A. That is right.

Q. And you put on that "Miscellaneous"! A. Yes, sir.

Q. I show you a fourth one—differing in the order in which they come—for \$15. And that is \$15 and that is for (3642) a tire? A. It is marked "tire."

Q. And here is one for \$20 for a tire, isn't it? A. 7.60

by 15 deluxe tire.

- Q. What are these items on the next to the last one!

  A. It says "labor" which could have been possibly a wash job.
- Q. Are any of those miscellaneous for tires? That is what I am trying to find out? A. One would be a grease job. I can't make out what the bottom one is.

Q. There are no tires or miscellaneous on that? A. No.

Q. Here is another one, \$10 for miscellaneous. Is that right? A. That could have been grease, oil and filter.

Q. But you put it down as miscellaneous? A. We mark many a credit card that way, rather than write them out. Still-do it to this day.

Q. For some of these items you gave Mr. Saab cash,

didn't you? A. No, sir.

Q. All of these tire items—one, two, three, four, and five—were in a period from August 15 to August 26, weren't they? A. That is right. Four for his Studebaker and one for his (3643) Buick.

Mr. Dias: What year? Mr. Royall: 1953.

# By Mr. Royall:

Q. You were questioned about these items, weren't you?

A. That is right.

Q. I will ask you if you didn't state at that time, under oath, that all the tires were mounted at the time they were sold? A. No, we didn't swear under oath that the tires were mounted. We swore under oath, brought down by the

Texas Company, that we did not give cash. That was brought down by Mr. Burgess.

Q. You were familiar with the regulations on credit cards. You have been dealing with them for sometime. Weren't you? A. That is right. I was in the wrong there, putting miscellaneous down, or putting down tires not mounted.

(3644) Q. I will give you these back, sir.

These matters were the occasion of a considerable amount of controversy between you and the Texas Company, weren't they? A. That's right.

Q. And that controversy lasted continuously from September, 1953, up to and through the time of the cancellation

notice, didn't it? A. That's right.

Q. And the company demanded payment from you on the theory that these cards had been properly issued for improper purposes, didn't it? A. That's right.

Q. And you employed a lawyer in the matter, did you

not? A. That's right.

Q. And your lawyer had a considerable amount of controversy with the company? A. He still has it on record. It is not finished yet:

Q. And they demanded that because of those circum-

stances that you repay the money? A. Did I pay it?

Q. The company demanded that you pay the money back to them? A. Texas Company demanded me to pay the money.

Q. And you finally did pay it back to them, you say?

A. That's right. Only-otherwise I wouldn't-

Q. Have you gotten any information about the check? You (3645) said you had it paid by check. Do you know the date of it? A. If we have to, I could get that from the bank.

Q. Sir? A. If I have to get the cancelled check, I could get that.

Q. There is no doubt about the fact that you paid it, is there? A. Yes, it was paid. \$127 and some cents. Otherwise they wouldn't make a settlement with me on what they owed me until this was paid.

Q. And you know do you that this same man, Saab, during that time or that same period went to a number of other Texaco stations and did the same thing during the same time, don't you? A. I was told that. I don't know it.

Q. And you know that the other stations paid the amounts back without any hesitation? A. I don't know anything about that. All I know is that his credit card was current, which I thought if a credit card is current that I should have whatever was issued on those cards.

Q. That matter was in writing, wasn't it, your credit

card? A. That's right.

Q. I ask you if it isn't a fact that when they first went down to see you about this matter—or later went down to see you, some few months before the cancellation—if you did not (3646) tell them that they would find; job tickets in your records that would support these vouchers? A. I didn't get that. Say that again.

Q. Did you tell them that you had job tickets that would support these credit cards? A. I did at that time, and then when we looked for them most were destroyed. When I got quite a number of them we just burned them up.

Q. After you burned them up didn't they go down there a second time and find that some had suddenly appeared in your records, but their numbers didn't correspond with the consecutive job sheet back that you had? A. That's right. I made those out myself to satisfy—

Q. You made those out yourself and put them in there between the time they first came and when they came back?

A. That is what they wanted.

#### JA 962

# James S. Zaloudek, Recalled, for Commission-Cross

Q. They were not numbered in the regular order were they? A. Naturally they wouldn't be if the others were burned. Each job ticket had its own number.

Q. When did they first come to see you about this matter? Early in September? A. It could have been the latter part of September or October.

Q. The latter part of September! A. Or October.

Mr. Dias: What year?

# (3647) By Mr. Royall:

Q. That was just about three weeks, not more than four weeks after these credit cards and job tickets had been paid out. Is that right? A. That's right. I made them out for them, to show them what we did.

Q. I mean they first came to you within three weeks after the last one of these credit cards was originally made out didn't they? A. That's right.

Q. And you say in that interim of three weeks that the job tickets had been burned? A. Right.

Q. I will ask you if they weren't in your job tickets, unburned at the time they went there, consecutive job tickets in your little book, right along with no vacancies, which covered this period from August 15 to the 26th? A. If they were around there I wouldn't know where they would be.

Q. Weren't they in your book there, that you had, down one, two, three, four, whatever the numbers were; weren't all the job tickets there when they first went to see you about it, every number filled, over this period from August 15 to the 26th, but no ticket about these jobs! Isn't that right! A. Naturally we wouldn't make a ticket out for tires. We (3648) only made job tickets out for grease, oil, filters and wash. Why would we make out tickets for tires and tubes, or gasoline!

Q. Didn't you say a few minutes ago that you hadn't made tickets out for these items? And they had been destroyed? A. That was taken right of these photostatic copies, just the way I made it for them. Just the way they brought them to me.

Q. Have you got any job tickets with you? A. No, sir.

They are all destroyed.

Q. I mean do you have any in any other matter? You haven't got any other job tickets, the form you use, have you? A. Oh, no, no. As I left the company three years ago I wouldn't need them.

Q. Not these, but others. You have been using job tickets all along haven't you? A. Where Lam at now or

there?

Q. There? A. There, yes. For grease, oil, filters and so forth. Where we would sell tires and gasoline we wouldn't make a job ticket.

Q. You knew at the time of this transaction with Saab that it was not the right thing to do to issue credit cards

for cash, didn't you? A. That's right.

Q. And you knew it was not the right thing to issue credit (3649) cards for the sale of merchandise when you knew that the man who bought them was going to self them and get the cash. You knew that, didn't you? A. That's right. They had to be mounted. Tires and batteries had to be put on the vehicle.

Q. But you are not permitted to issue a credit card directly or indirectly for cash given a man, are you? A:

We don't do that.

Q. You were not authorized to do that, were you! A. No, sir. It states right on the back of the card, no cash is to be given on any of the credit cards. That pertains to any company.

Q. Were some of these credit cards issued for used

batteries? A. No, sir.

Q. You are quite sure about that? A. Yes, sir.

Q. And none of these \$15.00 items except those that describe tires were itemized, were they? A. No, sir. Marked "miscellaneous."

Q. And you knew that you were supposed to itemize them? A. That's right.

Q. You said a minute ago that tires were not supposed to be carried on the job sheets? A. No.

Q. What was to be carried on the credit slips. Did you put (3650) tires on there; weren't you supposed to put tires on here! A. Yes.

· Q. And you didn't do it in two or three instances? A. Some of those miscellaneous, which could be grease, oil, gas, filters.

Q. You said you sold him five tires? A. That's right.

Q. And you put only two of them under the name of "tires," didn't you? A. I think-

- Q. Three of them? A. Three of them. One 7.60 by 15, two 6.40 by 15. The other two marked "miscellaneous" were also 6.40 by 15. Because at the time we could make them that cheap, and the tire was obsolete as far as any automobile was concerned, Firestone made a give-a-way special of \$5.00 apiece on the tires. We could sell them for—
  - Q. Wait a second. A. Furthermore, another thing-
- Q. Wait a minute. I am not asking you any questions. A. That's all right, I can talk.
  - Q. Wait a minute. A. I can talk.
- Q. I will ask you furthermore if one of the job tickets that they found when they went back the second time was dated (3651) September 15, and if you didn't later admit the transaction was August 15? A. What was on the sheet?
  - Q. Sir! A. What was on that sheet?

- Q. I am asking you, sir. I am asking you if it isn't a fact that when they went back the second time and found this job ticket or service order, whatever you want to call it, that one of those you had put back in there was dated September 15th instead of August 15th. And you admitted that it was— A. That could have been done because they told me to make credit cards out for those job tickets.
- Q. You made them out, didn't you? A. I made them out, yes.
- Q. That September 15 was for a transaction on August 15, wasn't it? A. I just guessed the date, I would say. If they were to go back through their credit cards they would probably find thousands of miscellaneous in there. You know why they didn't send those back to me, don't you? They collected for them.

Mr. Royall: Your Honor, this has no relation to that.

The Witness: They collected for those. They didn't collect for these. That is where the rub came in.

(3652) Mr. Royall: Your Honor, he should not volunteer until I ask questions. This doesn't relate to what I just asked him.

The Witness: You ask them and I will tell it back to you.

Mr. Royall: That is all, your Honor.

## (3653) Redirect examination by Mr. Dias:

Q. Do you have some further explanation, Mr. Zaloudek? A. Yes. Now we are talking about these credit cards right here. Why were those credit cards brought up? Because the man wouldn't pay for them. Why weren't other thousands of credit cards returned to me, marked "miscellaneous" that were paid for? And that was over

a period of six years. If they were to go through every credit card that was issued they would probably find thousands of them marked "miscellaneous:" Why didn't they send them back to me? Where the people paid for them? I took this man's word that that credit card was good.

Q. What was the story on that man's credit card? A. I didn't know the card was expired. They told me later that they cancelled him out, but they didn't tell me they

cancelled him out.

Q. Do you mean they used an expired credit card— A. That is something that I didn't know. Whether they expired his card, cancelled him out or what. I didn't know anything about it.

Q. Did you ever receive notice that that credit card was cancelled? A. I didn't receive any notice that the card was

cancelled out.

(3654) Q. Referring to that job ticket that you just spoke about a minute ago-

Q. That last date you mentioned, September rather than August-where did that come from?

> Mr. Dias: Do you have something on that? Mr. Royall: Those are in the records. We just had to pick up what we could. We haven't got the job tickets. He has them.

#### By Mr. Dias:

Q. Do you have the job tickets? A. No, I don't have no job ticket. I was asked by Mr. Burgess to make out job tickets pertaining to these here credit cards marked "miscellaneous," which I did.

Q. What are you referring to by "job tickets"! What is a job ticket! A. It is a work sheet, an original and duplicate.

Q. Is that the big yellow sheet? A. It is a regular

sheet, put out by the Texas Company.

Q. How do you usually date those! Do you write out "September" or "October" or "August" or do you use numerals! A. There are numbers on the job tickets.

(3655) Q. I am not talking of that. I mean when you

fill in the date? A. When we fill in the date?

Q. Do you write out each month, September, October, or November, or do you use the full designation of the months? A. When the customer comes in, John Doe, if he wants a grease job we put it down, wash, oil, grease, wheel bearings. The date isn't necessary.

Q. Don't you ever put a date on? A. We do, but I

say it is not necessary as far as that is concerned.

Q. When you do use a date how do you put it on the form? Say it is July 5? A. If it is July, or say it would be right now, which would be 1/19/57.

Q. Exactly. You would use the numeral, wouldn't you?

A. Yes.

- Q. Is it not unusual to use an "8" or "9" instead of August or September? A. That is right. We don't pay attention to date. We get the mileage down. That is what we are interested in.
- Q. How many cards were involved in this business? How many people did you have trouble with? A. This is the only one who wouldn't pay his bill.

Q. How long had he been coming into your station?

(3656) A. I would say two and a half years.

Q. Was it unusual for him to get credit on a credit card?

A. No, it wasn't. He signed for many cards for miscellaneous, and he paid them. But when this here stacked up on him, as I understand, it amounted to—Mr. Burgess

can verify this—he told me the man went and charged about \$600 or \$700 and he don't have the money.

- Q. And you knew about that at the time, that he was running around making these charges, didn't you? A. No.
  - Q. You didn't? A. Until they told me that-
  - Q. Who told you? A. Mr. Burgess.
- Q. How long was that after he had been into your place? A. That was after they cancelled him out and I didn't know anything about it.
- Q. How long was it before they notified you about that? That is, in relation to the time that they told you about the incident? A. Well, the way it first started, they came down and wanted to know if we were issuing money on these credit cards. I told him we didn't do that. We didn't practice that.
- Q. You are under oath, Mr. Zaloudek. (3657) A. That is right.
  - Q. Did you issue money on those cards? A. Sir?
- Q. Did you issue money on those credit cards? A. No, sir.
- Q. You did not? A. No, sir. There was no money issued on these cards.
- Q. Go ahead. A. When John Saab accumulated such a big bill, they went around the service stations, I was told by Mr. Burgess and he said some of the companies have given him money, they are paying. So he handed me all my credit eards back and he said, "We won't accept these because they are marked 'Miscellaneous', tires not mounted," and he can't pay the bill.
- Q. Was it unusual for you to mark cards "Miscellaneous" and sell something other than— A. That is right.
  - Q. Was that unusual? A. It is not unusual.
- Q. Do you know that others do the same thing? A. That is right. We do it to this day with the company I am with.

Q. There has been reference to credit cards. Just to keep it straight, are you referring to credit slips? (3658)

A. This is the credit slip itself. The customer has the card.

Q. He has the card? A. It has his name and the num-

ber.

Q. So that what we are talking about is one credit card, namely that issued to Saab? A. That is right.

Q. And a number of credit slips signed by Saab, is that

right? A. That is correct.

Q. Did you say that you paid Firestone for this money? Or did you mean Texas? A. No, I paid Texas Company,

- Q. When did you pay them? A. When I moved out of the building, that would have been the last part of July, West came down and inventoried my grease, oil, PT, gas, what was on hand.
  - Q. This is July of what year, 1954? A. That is '54.
- Q. Now place the date of this trouble. Is it August 1953? A. That would have been at the end of the month.

Q. Of what month? A. July, 1954.

- Q. No. That is the date you were cancelled. When did this Saab business arise? What year? 1953? (3659) A. 1953.
- Q. What is the first date of one of those credit slips? Start right at the beginning and let me have them all. A. Okay.

8/15/53. That was marked "miscellaneous" for \$15...

- Q. Just before you get beyond that, is that the slip that raised this ruckus before about August and September dates? Is that the one? A. That is it.
- Q. Is that the way the date is written on there? 8/15/53? A. That is right.
- Q. And that is marked "miscellaneous"? A. That is marked "miscellaneous."
- Q. What is the next one? A. Then we come to 8/22/53, 6.40 by 15, three and gas.

Q. And the next one? A. 8/21/53, miscellaneous, \$15 and gas. \$17.20.

Q. And the next one? A. 8/24/53, 7.60 by 15 tires,

wash, one four-door, five gallons, gas, \$23.40.

(3660) Q. Next. A. The next one would be 8-26, for 6.40 tires, \$15.00; \$2.20 gas.

Q. What is the total? A. \$17.20.

Q. And the next? A. 8-27, wash, labor and a grease job.

Q. That is a total of how much? A. And gasoline. \$15.78.

Q. Are there any others? A. One of these here could be "six". It could have been tubes. It is pretty hard to make out. It is right on that line there. Because the way I give it to you, five something, \$5.98 or something, gas; \$1.00, labor; \$1.50, wash; that wouldn't make \$15.48.

Q. That is the one dated 8-27-53? A. That looks like

"27". Right.

- Q. And the next? A. Then on 8-30, miscellaneous, marked \$10.00. Car wash, \$1.50. That miscellaneous, if I am not mistaken, that was grease, oil, filter, gasoline.
- Q. What was the total of that one? A. That one was \$11.50.
- Q. I missed the totals of the first three. Eleven dollars what? (3661) A. The first one?
  - Q. Yes. A. \$15.00 total.
  - Q. And the next? A. \$17.00.
  - Q. And the next? A. \$17.20.
- Q. In testifying on cross examination you said that this Saab deal might be the reason why you were cancelled. I think you misunderstood the question. You certainly, I believe, were misinformed. Is it not a fact that when I talked to you last night I explained to you that there was one dealer in this town who lost—

Mr. Royall: Your Honor, we object to cross-examination of this witness.

Mr. Dias: The witness was given some erroneous testimony and he is entitled to have it straightened out.

Mr. Royall: As a matter of fact, the record will show he started to make the explanation. Mr. Dias stopped him in the middle of it. And he made it only after the second question to him. That is what the record will show.

Hearing Examiner Kolb: Objection overruled.

#### By Mr. Dias:

Q. Is it not a fact that it was explained to you that there was one dealer that had been cancelled because he may have been (3662) cheating? A. That's right.

Q. And I asked you if you could be the one? A. And

I said no.

Q. And you said no. And you thought for awhile and then you said, "there is one incident that might—that they might be referring to." Is that correct? A. Yes. That is the Saab credit card.

Hearing Examiner Kolb: You can cover that on cross-examination.

Mr. Royall: He can ask him. I didn't want him to lead him.

#### By Mr. Dias:

Q. The point is that you did not testify that that is the reason you thought you had lost your station. A. That's right.

(Discussion off the record.)

#### James S. Zaloudek, Recalled, for Commission-Recross

#### By Mr. Dias:

Q. Let me get back to Saab, the Saab deal. When were you first notified of this Saab trouble? Do you recall? A. I would say it could have been three weeks later.

Q. Sometime in September, 1953? Is that your best

recollection? A. Possibly, yes.

- Q. What was the first thing said to you about that? (3663) A. That Saab has gone around and charged in the neighborhood of \$600 or \$700 worth of merchandise, and he can't pay it, and they cancelled him out, and they thought the dealers were giving Saab money on credit cards.
- Q. Did they tell you when they cancelled out his credit card? A. No.
- Q. Do you know right now that that credit card was cancelled? A. I still don't know whether the card is current to this date. I never received any letter cancelling Saab's card.
- Q. How much did you say that you paid the Texaco Company! A. \$127.63.

Q. Was that supposed to cover the face value of all

those tickets? A. That's right.

Q. Did it include interest? A. Nothing was said about interest.

Mr. Dias: That is all.

Mr. Royall: Your Honor, I have a couple more questions, and then I want to answer some of the redirect.

#### Recross examination by Mr. Royall:

Q. Mr. Zaloudek, did you receive a bonus from the company in 1952 and '53? A. For oil sold, yes.

(3664) Q. And that was sent to you with the usual

form letter? Wasn't it? A. That's right.

#### James S. Zaloudek, Recalled, for Commission-Recross

Q. Have you got that letter? A. No, sir. All destroyed.

Q. They sent a form letter with it, didn't they? A.

How much oil and grease were sold.

Q. And they sent you a letter of explanation did they not? A. Yes.

Q. Mr. Zaloudek, it is true, is it not, that the first time your lease expired, after this transaction in August 1953

— A. 1954.

Q. No, the transaction in August, 1953, I am talking about. A. I thought you were talking about expiration.

Q. The first time your lease could be cancelled after that date and after September, 1953, when it was brought to your attention, was July 23, 1954. That was the first time your lease ran ont, wasn't it? A. That's right.

Q. And the first time it ran out after that occurrence, and after you had had a discussion over it for five or six months, the first time they could do it they gave you notice,

didn't they? A. That's right.

(3665) Q. He spoke to you about some conversations with Mr. Burgess. You know Mr. Burgess, don't you? A. That's right.

Q. He is a man of the highest character, isn't he? A.

Right.

- Q. I will ask you if Mr. Burgess didn't have prepared an affidavit in the fall of 1953, two or three months after this happened, in which he put down the facts that you stated were correct? A. That's right.
- Q. And he brought it to you and you signed it, didn't you? A. Right.

Q. And you swore to it? A. Right.

Q. And in that affidavit I will ask you if you didn't state that "all tires sold on this credit card to this cus-

## James S. Zaloudek, Recalled, for Commission-Redirect

tomer were mounted by my employees on an automobile driven by Mr. Saab." Didn't you swear to that? A. That is what the employees told me, that they mounted them.

- (3666) Q. Didn't you swear in your cross-examination that they were not mounted? A. On the affidavit, the reason I signed that, my employees told me they mounted them. That was in the evening. I didn't know. I took their word for it.
- Q. This affidavit was signed two or three months after—three months after the transaction, wasn't it? A. I wouldn't remember the date.
- Q. But it was along in November or December, wasn't it? A. I didn't think it was that late.
- Q. You yourself made out these credit cards, didn't you? A. That's right.

## Mr. Boyall: That is all.

#### Redirect examination by Mr. Dias:

- Q. Where did you get that affidavit? A. It was brought down by Mr. Burgess.
  - Q. Where? To your station? A. Right to the station.
- Q. Do you remember the time of the day? A. I would say it was after dinner. After 12:00 o'clock.
  - Q. Noon! A. At noon.
- Q. Were you busy then? A. No, I wouldn't say at the time.
- (3667) Q. Did you read that affidavit? A. I thought I did.
- Q. Did you just sign it without reading it or did you glance over it?

Mr. Royall: He said he did. We object to that question.

#### A. I remember signing it.

## James S. Zaloudek, Recalled, for Commission-Recross

Hearing Examiner Kolb: Objection sustained.

A. He said here is an affidavit for you to sign, whether you took money or not. So I signed it.

#### By Mr. Dias:

Q. Whether you took money or not? A. Yes, from this Mr. Saab.

Q. What has that to do with the tires mounted? A.

That is something I don't know.

Q. Did he tell you that here is an affidavit to the effect that you didn't give him money in cash? Is that what he said? A. That is what they were after. Whether we gave him money or not.

Q. With that understanding you signed it, is that cor-

rect? A. That is it.

Mr. Dias: That is all.

The Witness: They weren't interested in the tires or anything else. They wanted to know if we gave him money (3668) on this credit card.

#### Recross examination by Mr. Royall:

Q. Coming back to that again, you swore in your first cross-examination they were not mounted, didn't you? Right here in this court? A. I didn't see them mounted.

Q. You swore they weren't mounted, didn't you? A. I

probably said they weren't. I didn't see them.

Q. When you signed this affidavit you said they were mounted didn't you? A. That's right.

Mr. Royall: That is all.

#### George Hoffman, for Commission-Direct

The Witness: That is what was told to me by the employees.

Mr. Dias: That is all.

(3669) GEORGE HOFFMAN was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

#### Direct examination by Mr. Dias:

Q. Please state your full name and business address for the record? A. George Hoffman, 16th and Jones.

Q. What is the name of your company? A. Carl A.

Anderson, Incorporated.

Q. How many years have you been in the TBA business, TBA or related business? A. I have been with Mr. Anderson since April 1, 1940.

Q. What is your position with Anderson? A. At the

moment it is assistant sales manager.

Q. Have you had occasion to visit the sales territories with your salesmen? A. Yes.

Q. Do you know how many Texaco and Conoco stations there are in your sales territory? A. Not exactly. There is something over 30 in the City of Omaha.

Q. And Conoco stations? (3670) A. In the city limits

of Omaha I would say probably 15.

Q. Do you know how many are regularly solicited?

A. About three or four.

Q. Three or four Conoco? A. Conoco, yes.

Q. How many Texaco do you regularly solicit now?

A. About eight. I believe a few of those are independent.

Q. Among the Texaco stations have you ever sold Gene Talmadge, at 42nd and Ames! A. Yes.

Q. What have you sold him? A. At one time we had batteries.

#### George Hoffman, for Commission-Direct

Q. Had what? A. Batteries.

Q. What type batteries did you sell? A. Auto-Lite.

Q. You say at one time. When was that? A. That would be when he first took the station, in the early Fifties, I believe.

(3671) Q. You say they at one time purchased Auto-Lite. Did they stop purchasing Auto-Lite batteries! A. Yes.

- Q. Was any reason given? A. He took on Goodrich batteries.
- Q. Were you able to sell them any, or do you sell them any other products? A. We did up to sometime ago—car jacks, wheel seals, miscellaneous items, fast charger.
- Q. Do you have some idea of the volume of business with that station? A. We have no business there to amount to anything at all at the moment.
- Q. Does Gene Talmadge own that station! A. No. Not that I know of. I would say No. I think he leases it.
- Q. How about the Ray and Dick Swanson Texaco Station? A. I would say they lease that.
- Q. Do you sell anything to those people? A. I believe I sold them a fast charger. Ray and (3672) Dick took a station on North 30th and—30th and Pratt, I believe. We sold them a little ignition while he was there. Then he went back with his father at 19th and Cumming.

Q. They own their station? A. I wouldn't know. But . I would say No. I would say it is leased.

Q. Have you ever tried to sell them batteries? You sold them a battery charger, a fast charger. Is that a battery charger? A. Yes.

Q. Have you ever sold them any batteries? A. No.

#### George Hoffman, for Commission-Cross

Q. Have you ever tried? A. I imagine so. I have tried all of them in town, every place I have gone into.

#### (3673) By Mr. Dias:

- Q. How about the Leo Bray Conoco station? A. Leo Bray has never purchased anything from me, other than—that is in the TBA line, I mean. He has purchased fast chargers, shock absorbers, ignition, bumper jacks, such items.
- Q. Ray and Dick Swanson, do you know what brand of TBA they carry? A. As I remember it was Firestone.

Q. And Leo Bray Conoco? A. That would be Goodrich.

Q. Do you have any other Conoco stations in the Omaha area that you sell to? A. Nothing in the TBA line.

Q. Do vou know Ernie's Texaco? A. Yes.

- Q. Does your company sell to them? A. We sell them ignition. And I sold them a battery charger.
- (3674) Q. Do you know what TBA products they carry? A. I would say Firestone.
- Q. Does Ernie own his own station? A. I believe it is leased. I believe he is a lessee.
- Q. This Gene Talmadge at 42nd and Ames, is that also known as Fontenelle Park Texaco? A. Yes.

#### Cross-examination by Mr. Lorenzen:

- Q. The station you described as Ernie's Texaco, his last name is Kohler, isn't it! A. Ernie Kohler, I believe. That is 45th and Lake.
- Q. You sell him filters, among other things, don't you? A. I believe we did have some filters, yes.
  - Q. Purolators? A. Yes.

#### George Hoffman, for Commission-Cross.

(3675) Q. Don't you sell him some miscellaneous accessories such as waxes and radiator leak compounds? A. I cannot answer that offhand.

Q. You didn't mean to give a complete list of all of the Texaco dealers to whom your company sells in the Lincoln-Omaha area, did you? A. No.

Q. Were those few you mentioned? A. No.

Q. These were just a few you picked out? A. Just a few here in the City, yes.

Q. You didn't even pick out all of the ones in the City, did you? A. I believe I said there were something over 30 stations. Some of those could be TBA, or could be independents, I mean.

Q. Whether they were independent or not, what I am asking you is whether you have given us or intended to give us the names of all of the dealers who handle Texaco gasoline who also buy from your company? A. No. Just the ones that I was asked to.

Q. I see. You just picked out the ones that the Government asked you— A. I didn't pick any out. I believe Mr. Dias picked them out.

Q. Mr. Dias picked them out. I see.

(3676) Mr. Lorenzen: That is all.

# Cross-examination by Mr. Barton:

Q. And the same thing I take it was true with respect to the Conoco stations? You just looked for the ones Mr. Dias told you to look for? A. I didn't look for any. I just answered his questions on the ones he asked me about.

Q. So you weren't inferring those were all the Conoco stations you sold to? A. No, sir.

Mr. Dias: Thank you, Mr. Hoffman. That is all.

Mr. Barton: It is hereby stipulated between counsel that Automotive Supplies, Inc., is the same as Frost Industries, Automotive Supplies merely being a successor name to Frost Industries, and that Frost was a Goodrich distributor and that the name of Frost has been changed to Automotive Supplies.

(3682) RALPH W. McCANN was thereupon called as a witness for the Commission, and, having been first duly sworn, was examined and testified as follows:

#### Direct examination by Mr. Dias:

Q. Will you state your full name and business address for the record? A. Ralph W. McCann, 1914 South Central Expressway, Dallas, Texas.

Q. And the name of your company? A. Continental

Battery Manufacturing Corporation.

Q. Will you state your position with the company? A. I am president and general manager of the company.

Q. How long have you been in that position? A. Since 1950.

Q. How long have you been with the company in all? A. Since its inception in 1932.

Q. What type business is the Continental Battery Company in? A. Storage battery manufacturing and sale.

Q. What type storage batteries? A. All passenger and truck type storage batteries.

Q. Do you manufacture airplane or motorcycle type— A. No, sir, we do not manufacture motorcycle or airplane.

Q. What class customers does the company sell to: (3683) A. To a very large extent perhaps half to service stations and garages.

Q. And the other half? A. I would say distributors,

who in turn sell to service stations and garages.

Q. Have you also sold to that class of customer? A. Yes, sir.

Q. Do you have any idea of how many service stations you sell to? A. I would say perhaps 700. 650 to 700.

Q. Does your company have salesmen? A. Yes. We directly call on the service stations ourselves with our own salesmen, and then sell to distributors to them. In that case the distributor calls on them. That figure that I gave you, that would represent the number of stations that we are selling direct ourselves, and not those through the distributors which I wouldn't be familiar with, the number.

Q. Will you briefly narrate the method of doing business in your company, from its inception on up to date? A. Yes, sir. We started our business in 1932 for the purpose of recognizing the specialized and perishable nature of storage batteries and the difficulties of their being handled and distributed, and knowing that some of the regular automobile accessory houses had discontinued batteries to the service station accounts due to those difficulties, we (3684) conceived the idea of selling factory-fresh storage batteries direct to the service station trade, handling their adjustments, handling all their trouble for them. And there is some trouble in connection with the battery business in as much as they are sold on regular guarantees and there are some adjustments.

We felt that we would represent a very valuable service to the service station dealers. The battery business is largely an auxiliary department with them, a very necessary and useful one to their consumer trade and to them, but an auxiliary department.

We started out in '32 and were able to build up four very good routes in Texas and southern Oklahoma, and profitable routes. That continued to build up and increase until the late 30s. Then we began to feel some restrictions in our salable market, and we found it a little tougher from then on to expand the business.

That restriction seemed to continue until the late 40s. In the late 40s we found through experience that we couldn't expand. We attempted to establish a new route as we had the previous ones, and we used one of our experienced men on the route as we had in times past to build it up, and he found the market restricted to such an extent that he couldn't make a success of it. And that was in 1948.

(3685) Then in 1949 we weren't willing to give up on it, although we had invested several thousand dollars in it. We changed salesmen on it and continued it through 1949, and we finally had to give it up. We just didn't find the market remaining out there to sustain the trucks as we had been able to establish the previous four.

- (3686) Q. During that period 1932 to 1949, what was the sales territory of your company? A. Well, it embraced all of the state of Texas and southern Oklahoma, eastern New Mexico, and western Louisiana and parts of Arkansas.
- Q. Do you recall how many trucks you had selling at that time in your territories? A. We had four. We attempted to establish a fifth.
- Q. Who were the main customers during that period, from 1932 to— A. Service station operators.
- Q. Did you sell to other type customers during that period? A. We sold to garages, and to a much lesser extent to a few auto supply stores.
- Q. During that period, 1932 to '49, did you at any time among your customers have Texaco station customers? A. Yes, sir. We formerly sold between two and three hundred Texaco stations.
- Q. How long did that condition prevail? A. That started to dry up in the late 30s. By 1949 it was greatly reduced.

Mr. Royall: Your Honor, may I move to strike that on the ground that that is not the period which we are assuming to try, as I understand it. At this time it doesn't seem (3687) connected to that period. For that reason I move to strike that answer.

Mr. Dias: As I stated before, by the time we have the other witnesses from this company testify, that will be connected.

Hearing Examiner Kolb: Motion to strike will be denied.

## By Mr. Dias:

Q. Does your company continue to call on Texaco stations Mr. McCann? A. Yes, to some extent. We try to avoid those that we feel are lease-controlled. We try to call on those that we feel are not in a leased station because we don't think we can sell those in a leased station.

Mr. Royall: Your Honor, we move to strike that answer as being non-responsive to the question, and secondly, because it embodies conclusions and opinions that we consider not admissible.

Hearing Examiner Kolb: Read the question and answer.

(Question and answer read.)

Hearing Examiner Kolb: Motion to strike will be denied.

#### By Mr. Dias:

Q. Will you state again the number of Texaco stations that you sold at one time? (3688) A. I would say—

Mr. Royall: May we ask the time?

#### By Mr. Dias:

Q. During the period 1932 to '49. A. I would say in the late 30s we were selling close to 300 of them.

Mr. Royall: We object, your Honor, and move to strike on the same grounds previously stated, that it is in a period we are not trying.

Hearing Examiner Kolb: Motion to strike will be denied. Objection overruled.

#### By Mr. Dias:

Q. Of that number were there stations, all types of Texaco stations? In other words, operator-owned and company-owned stations? A. Yes, sir.

Q. Did they openly stock and advertise your batteries. on the stations? A. Most of the ones from the leased stations, no, sir. The ones from the leased stations that were handling our batteries did not openly display them.

Mr. Royall: You are still talking about 1932 to '491

Mr. Dias: The late 30s. I understand his peak was two to three hundred stations.

#### (3689) By Mr. Dias:

Q. You stated that by the end of 1949 the number had been greatly reduced. Do you have any idea of the number at that time? A. I didn't—

A. (Continuing) —arrive at an actual figure in 1949, but I would say it was less than a hundred.

- Q. Do the same conditions prevail today as far as you know? A. Yes, sir. I would say we are selling less than 25 now.
- Q. How long has that condition existed? A. That condition has existed for a year or more.
- Q. Can you give me the trade names of the batteries that you sell? A. Continental, Pow-R-Life, Mustang, and Budget.

Q. Are they various price ranged batteries? A. Yes, sir.

Q. I take it Budget is a low priced battery, budget. A. Yes, sir.

(3690) Q. Pow-R-Life is the next and then Continental? A. Yes, sir.

- Q. Are your batteries competitive, price-wise, with the other batteries on the market? A. To the best of our knowledge, they are. We certainly try to keep them that way at all times.
- Q. Do you have any idea of what your volume of business was with those Texaco stations when there were three hundred dealing with you? Monthly figures?

Mr. Royall: We object. It comes outside the period we are trying.

I would say that the average Texaco account runs from \$600 to \$750 a year.

# By Mr. Dias:

- Q. During the current time, can you estimate the volume of business done with Texaco stations that are buying your batteries? A. I would say it will run into over fifteen to twenty thousand dollars a year.
- Q. That is total for all stations? A. Total for all of them.

## (3691) Cross-examination by Mr. Royall:

- (3692) Q. Have you with you or have any of the people working for you a list of all the service stations that now buy from you? A. No. sig. I wouldn't say they had a list of all of them. But I think the two salesment do you mean service stations of every variety?
  - Q. Yes. A. No, sir, they do not have that.
- Q. You have that data, do you? A. Yes, we have that data. It would not be complete in all probability because selling off-route trucks a lot of that business is cash business. And we keep no particular records on those accounts. But the ones that buy from us on open account we do have those records.
- Q. So any figures that you would give, or the salesmen would give, would be confined to open accounts and would not include cash accounts? A. That is largely true; yes, sir.
- Q. Do you have a good many places of business? A. Yes, sir; we do. Of course Dallas is our headquarters and we have warehouses in Louisiana and other points in Texas, and Oklahoma.
- Q. Do you have more than one warehouse in Dallas and the vicinity? (3693) A. No, sir. Just one warehouse in Dallas and vicinity.
- Q. Does a good part of your service station business come from Dallas itself? A. Yes, a substantial part of it.
- Q. More than 50 percent? A. No, sir; I wouldn't say that.
- Q. Forty percent? A. You have me guessing now. I would say somewhere around 35 or 40 percent.
- Q. I suppose in the Dallas area particularly there is a good deal of pickup buying, is there not? A. Yes, in the city there is.

- Q. That is what I mean. That is also true in the neighborhood of any other warehouse that you have? A. Not to as much an extent as it would be in Dallas.
- Q. And you keep no record that would disclose the amount of the pickup business in Dallas, do you? A. We wouldn't have that separated on our records.

Q. Is this battery of yours a dry battery? A. We sell

them both ways.

- Q. How long have you been making dry batteries? A. Since it has become common in the industry in the last year and a half.
  - Q. Year and a half? A. Yes.

(3694) Q. When did you get it on the market? A. We put it officially on the market about a year ago.

Q. Wasn't it a little less than a year ago? A. I

wouldn't undertake to say the exact date.

Q. Who would— A. I believe Kelly McCann would know the date on which we put it on. Of course we have been making dry charge batteries for a good many years but not on our price list and not for the general trade. It is just when the demand for dry charge batteries became common that we then started to sell them as a matter of general offering.

Q. There were a good many companies started selling before you did, weren't they, selling dry batteries? A. Not very long before we did.

- Q. Two years, at least? A. No, sir, I wouldn't say that.
- Q. Do you know? A. Well, no, I don't know the exact date. In my opinion we were not that far behind.

Q. Does anybody make any batteries for you? A. No, sir. We make them all ourselves.

Q. It is not of course a nationally advertised battery: it is designed for the particular localities you mentioned? A. It is original company, which is common in the battery

manufacturing industry. A large portion of the business is (3695), among the original companies. We are the original company in the Southwest.

Q. I mean it is not a nationally advertised or nationally

distributed brand, is it? A. No, sir.

- Q. Do you have any arrangements through any contracts of any kind to service your batteries outside of the territory which you serve? A. We service them direct whenever the necessity arises. We will service them anywhere in the United States. And we have done so:
- Q. Have you any contracts with anybody? A. No, sir; no contracts.
- Q. You have no regular arrangement to do that, do you? A. No, sir. Just on an individual basis.
- Q. And in the instances where you service they have to notify you here and you handle it from here, is that right? A. That is right.
- Q. Are there any other suppliers of batteries in this area, any other distributors or manufacturers of batteries, other than Texas Company or the Goodrich Company? A. Oh, yes, sir; there are many distributors of batteries here.
- Q. Could you give us the names of as many as you can think of, offhand? (3696) A. Well, I know them all.
- Q. Would you say there are 40? A. Are you speaking about manufacturers now?
- Q. No, sir, different distributors who distribute. A. Whether there would be 40 distributors in the Southwestern region in which we operate?
  - Q. Yes. A. Yes, sir.
  - Q. Would there be 60? A. Yes, sir.
- Q. Would there be 100? A. Yes, sir; I expect there would be.
- . Q. Let's take Dallas alone. How many would there be here? A. There would probably be—

Q. Thirty! A. No. I doubt that. I would imagine there would be a dozen.

Q. Will you name some of those for us! A. Yes. Among the manufacturers of course Dallas is a battery manufacturing center. Vatilic Battery Company is here; Green Manufacturing Company; and of course Electric Storage Battery Company have a distributor here, distributing Willard and Exide batteries. Offhand I don't know just who that is.

And perhaps our sales manager can give you, when (3697) he testifies, a more detailed list.

Q. These various distributors are competitors of yours?

A. Yes, sir.

Q. Has not the volume of sales increased very rapidly in the last four or five years, your sales? A. No, sir, I wouldn't say it increased very rapidly.

Q. Do you have those figures? A. No, sir, I do not have those figures.

Q. You do know that they have increased some in every year? A. Of course we had quite a decline in 1949.

Q. I didn't mean— A. Before we reorganized and redirected our efforts.

Q. I am not asking— A. We have had small increases probably five or six percent on an average per year.

Q. And your 1956 sales were above your 1955, weren't they? A. I am not positive of that.

Q. Didn't you make a statement to that effect in the paper recently? A. That statement might have come from our organization. And it is probably true.

(3699) Q. Have general business conditions been affected by drought in the last few years! A. I would say generally, yes, to some extent.

Q. \* \* You spoke of having sold a considerable part of your business to distributors—subdistributors or subjobbers? Is that right? A. To jobbers and distributors, yes.

Q. And you don't know how many of those there are,

do you? A. Yes. I would say about a half dozen.

(3700) Q. Don't you know that there are at least 60 or 70? You are not including wagon jobbers, are you, in that number? A. Yes.

Q. Don't you know that there are between 60 and 70 of them in this area? A. I am glad to hear that. You are giving me some competitive information here. Maybe we have been asleep on the job.

Q. Would you be surprised if I told you that there are at least 68 of them? A. Yes, I would be surprised at that.

- Q. And I believe you have already said that you don't know how much they sell? A. No.
- Q. And those of course are additional sources to the distributors you first mentioned, where you estimated there would be 12. Is that right? A. I estimated there would be 12 distributors here in Dallas. I was talking about our own accounts.
- Q. I was asking not about those but about others, including wagon jumpers. There are two distinct classes, aren't there? A. Yes, there are two distinct classes, but we like the wagon jumpers.
- (3702) Q. You gave some of them. Are there any more you can think of? A. Oh, yes. Every battery that is sold nationally in the country is sold here.

Q. Any special ones locally? Do you have one named Texan? A. Yes, Texan is sold locally.

Q. Do you have any others you can think of? (3703)
A. Southland is sold locally; Green is sold locally; Reliable is sold locally; and all of the nationally distributed batteries, of course.

- Q. This wagon trade or wagon jobbers—what is the proper name for that! A. Some of them call themselves wagon jobbers. Some term themselves battery distributors.
- · Q. Has that been growing recently? A. Has it been growing?
- Q. Yes. The number, I mean. A. No, sir, I wouldn't say it has been. I would say otherwise.

## (3704) Cross-examination by Mr. Barton:

- Q. Mr. McCann, the purpose of the dry charge battery was to give the battery a longer shelf life, wasn't it? A. Yes, sir.
- Q. That is peculiarly necessary because, as you said, the battery business is a business where it is a perishable commodity. I think you stated that that is the reason you went into the business? A. Yes, but we were delivering factory-fresh batteries direct, right off the truck, right out of the factory. That was not a great problem with us.
- Q. Your largest selling is what? Mustang? A. Continental.
- (3705) Q. And that is your highest-priced brand, Continental? A. Yes, sir.
- Q. And you have the other brands which grade down in price? A. Our competitive brands.
  - Q. Power-Life, Mustang, and Budget! A. Yes, sir.
- Q. Mr. McCann, your dry-charge battery came on the market sometime during the past year, is that right? A. Yes, sir.
- Q. And— A. We had them available. We notified all of our accounts six months before we put them on the price list that we had them available as the demand developed. And sometime last year we put them on the price list.

Q. You don't have dry-charge batteries on your price list for all your classifications, now, do you? A. I believe we do in all popular group sizes. Batteries you know are sold by groups.

Q. How about Mustang? Do you have that on your

price list? A. Oh, no, we don't have it on Mustang.

Q. You don't? A. No.

Q. And not on Budget! A. No, sir.

- Q. And not on the Power-Life? (3706) A. I might add—
- Q. You don't have it on the Power-Life price list? A. I might add—

Q. You don't have it on the Power-Life price list? A.

No.

Q. And you don't have it on all the Continental price lists! A. I don't know of anybody who has dry-charge batteries in the cheap competitive items.

Mr. Barton: I move to strike the answer as not responsive.

Hearing Examiner Kolb: Read the question and

answer.

(Question and answer read.)

Hearing Examiner Kolb: The answer may stand.

#### By Mr. Barton:

Q. Is your Continental a cheap battery, Mr. McCann?

A. No. sir, it isn't.

Q. And you don't have the dry-battery on Continental's price list for all of the batteries, do you? - A. We have it in various groups, popular groups, on Continental.

. Q. What is the date of your most recent Continental

battery price list? A. I believe it is in November.

(3707) Q. November 19, 1956? A. I believe that is correct.

- Q. And when you talk about group you are talking about your group one, group two, et cetera batteries? A. That is right.
- Q. What would be the most popular group? A. Group one.
- Q. I take it in group 1 your Super Power battery would be the most popular brand, wouldn't it? A. Yes, I suppose it would be.

Q. That is the 15-TT type? A. Yes.

Q. Mr. McCann, that battery on your November 19, 1956 price list does not carry a price for dry-charge battery, does it? A. I believe that is correct. However, we supply it on order, dry-charged.

Q. Pardon? A. We supply it on order dry-charged.

- Q. In the event a customer takes the pains to order a dry-charge battery, even though it isn't on your price list, you will supply it? A. We don't put that kind of a hard-ship on him. We tell him if he wants that battery dry-charged it is available.
- Q. Why don't you have it on your price list? A. Well, maybe our sales manager can tell you more about (3708) that than I can. I would say that we don't have it on there simply because there hasn't been sufficient demand for that type battery in dry-charge.
- Q. Your sales in 1951 were in excess of a half million dollars? A. Yes, sir.
- Q. And they have grown each year since that time, haven't they? A. Small percentage, yes.
- Q. Your sales now are in excess of a half million dollars? A. Yes.

(3709) Q. How many salesmen do you have! A. We have five.

Q. One in each territory! Five trucks! A. Four trucks.

Q. Pardon! A. Four route trucks. Territorial route trucks.

Q. How many salesmen do you have in Dallas? A. One.

Q. And one truck that you use in Dallas? A. No. We have delivery trucks that we deliver orders as the salesman takes them and 'phones them in.

Q. In other words, you are not including— A. We

don't use the route system in Dallas.

- Q. You are not including in your four trucks the delivery trucks which you use for deliveries in Dallas? A. No. City delivery trucks are not included in the route trucks.
  - Q. How are your salesmen paid? A. Salary and bonus.

Q. Is that bonus based on a commission plan? A. Yes. It is based on quotas, volume. They have a base salary.

Q. And then they get a bonus based and commission based on the extent to which they reach their quotas for the year? A. Exceeding their quotas.

(3710) Q. How many service station customers did you say you presently have? A. I would say in the neigh-

borhood of 700.

Q. You are not including in those cash customers, I take it! A. Yes, I believe they would be cash customers in there, too.

Q. They would be in the 700? A. Yes.

Q. How many other types of customers; numerically, how many other customers would you have? A. That would require a little thought. I would say not distributors, I would say not over 12 or 15.

Q. How about garages? A. Garages would be in that 700. Of course, the percentage of garages is very small.

In other words, we consider a garage with a pump, we consider that a service station account.

- Q. Does that include new car dealers also? Or do you sell to new car dealers? A. We sell to some new car dealers.
- Q. But not many? -A. Not a great many of them. We do sell some.
- Q. Do you sell any used car dealers? A. In the cities we sell a few used car dealers, like Dallas, Houston. But a comparatively small and insignificant number.
  - (3713) Hearing Examiner Kolb: When did your dry charge battery first appear on your price list?

The Witness: It was sometime the early part of last year. But I think Mr. Kelly McCann can answer that when he gets on the stand more directly than I can.

## Cross-examination by Mr. Royall:

Q. You gave certain figures on averages and volume of sales, to which objection was made. Do you have with you the records supporting those figures? (3714) A. No, sir.

Q. Are they your estimates? A. Well, they are my knowledge. I have a business that is sufficiently small that I have to keep my fingers on it to keep it going. To my knowledge. But in so far as saying that I have records dating way back and produce them at this hearing, I certainly don't.

Q. I wasn't asking you about way back. You must have misunderstood me. I say have you got records readily available from which you got that conclusion of the

amount. A. That is my general knowledge, based on our general overall business.

Q. Did you look at your records when you got it? A. I

didn't have to look at my records. I know.

Q. But you don't have the records here? A. No, I

don't have those records here in my pocket.

Q. Are they readily available? A. No. I would say it would take quite a good deal of tearing down and quite a good deal of clerical work to break that down.

#### Redirect examination by Mr. Dias:

Q. What is the difference between open and closed account? (3715) A. In route truck distribution, where a salesman calls on a service station account, and he takes his order and delivers his batteries right then, many service stations with first-class credit ratings would prefer to pay a truck routeman cash right there, and then he eliminates a lot of bookkeeping through his records and the transaction is a very simple and direct one. When you sell batteries off a route truck like that you have many dealers who prefer to pay you cash. Perhaps you would be perfectly willing to carry it on open account if they so desired.

Q. Does that type account buy for stocking purpose or do they just buy one here and one there? A. Oh, no. They buy for stocking purposes just like the other type.

accounts.

Q. You also mentioned that your sales have increased about five or six percent, 1956 over 1955. Can you estimate how much of that increase was attributable to sales to Texaco stations! (3716) A. None of it.

#### By Mr. Dias:

- Q. What is the difference between a dry charge and a wet charge? A. A wet charge battery and a dry charge battery—
- Q. Does a dry charge have longer life! A. No, sir. I wouldn't say they had longer life at all. The advantage to them is that it is an advantage in their handling in whole sale warehouses and in retail establishments inasmuch as they can be kept on the shelf without any attention from the dealer, such as recharging and testing, for periods up to six months.

So far as their capacities are concerned and their life is concerned, I would say it is substantially the same as the wet charge battery. But the wet charge battery does have to be getten fresh and if allowed to set on the dealer's shelf for an indefinite time, the dealers have to periodically charge it. That is where our trucks come around once a month and keep that dealer's stock fresh for him. It relieves him of that obligation.

Q. How do they keep it fresh? A. They would pick up those recharged batteries and replace them with fresh charged batteries. We would bring the (3717) batteries back in on the truck, recharge them, clean them up and take them back out again. There is nothing the matter with them.

Q. I think you stated that you have about 700 service station customers. A. That would be my estimate.

- Q. Did you say about 12 others? Or did I misunderstand you? A. About 12 or 15 other type accounts, I would say.
- Q. What would those other 12 or 15 be? A. They would be distributors.
- Q. You mentioned that you had included garages in that figure of 700. Are there any other type customers

# Ralph W. McCann, for Commission—Recross Kelly McCann, for Commission—Direct

included in that 700 figure? A. Yes, sir. There would be a few auto supply stores, which would be store type setups handling auto supplies and the battery line.

Q. Anything else? A. Garages, auto supply stores,

and yes, we sell a department or two.

Q. Is that all that you can think of? A. That is all I. can think of offhand.

## (3718) Recross-examination by Mr. Barton:

Q. You don't know how many service stations these 15 or 10 distributors sell to? A. No, sir. I don't have that information. That is their business and they naturally keep their own records. They just buy batteries from us.

Q. That is about 40 percent of your business though?

A. I would say-

Q. 50! A. 35. Somewhere in that neighborhood.

KELLY McCANN was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

#### (3719) Direct examination by Mr. Dias:

Q. Will you state your full name and business address for the record? A. Kelly McCann, 1914 South Central Expressway, Continental Battery Manufacturing Company.

Q. And your position with the company? A. Sales

manager.

Q. How long have you held that position? A Since 1951.

#### Kelly McCann, for Commission—Direct

- Q. Were you with the company prior to that time?
  - Q. For how many years? A. About a year and a half.
- (3720) Q. Do you know how many Texaco stations your company sells? A. I know approximately. I wouldn't say right down to the exact one, but I know approximately how many we sell.
- Q. Can you give us that figure? A. Do you want the Texaco stations that are leased? Operators lease them from the Texas Company? Or the stations that are leased individually, that are owned-stations?
- Q. Do you have a breakdown of that type? (3721)
- Q. Can you tell me the number of leased stations that buy your batteries? A. The number of leased stations that buy our batteries would be approximately 10. When I say "buy our batteries," these are not stations that stock our batteries 100 percent and just sell our batteries. This includes customers that may want to fill in, may want one battery or two batteries on a fill-in basis.
- Q. Of those ten, are there any that stock them regularly? A. Yes.
- Q. How many are there! A. I would have to check. I would say around five.
- Q. Do they purchase your battery exclusively? A. I personally only know of one abount that purchases our batteries exclusively. But there may be more, and you can get that information from the salesman that actually called on them.
- Q. About these five others that buy a single battery here or there— A. It is approximately five. They buy on a fill-in basis and we sell them only a portion of their battery needs.

#### Kelly McCann, for Commission-Direct

- Q. Do you have figures showing sales to some Texaco stations? A. Yes.
- Q. Can you give me some instances of those sales? (3722) A. What do you want now?
- Q. Do you have sales figures to some accounts, some Texaço accounts? A. I have a sales figure here on an account that was one of our very good—it is just an illustration and a good example—of an account that we sold, one of our very best accounts here in the City of Dallas. A Texaco station. We sold him for years and years. We are now losing out on the account. He is discontinuing the use of our batteries.

I can give you those comparative figures.

Q. Can you do that? A. This is a Texaco station that we understand to be a leased station. In 1952 he bought \$3,761 worth of batteries.

In 1953 he bought \$4,550; and it was along in this period that the account was split and it was our understanding that—

The Witness: It was at this point that we were beginning to lose out on the account.

In 1954, \$2,786; 1955, \$1,705; 1956, \$802. And the last quarter, the last three months of 1956 we sold \$78.00 worth of batteries.

Q. What was that \$802 figure? A. That was for the year 1956.

(3724) Q. Will you name the station? A: Ray Tosch. Q. If I understand correctly, you started with Continental in roughly 1949. Is that right? The middle of 1949? A. It was 1950.

# Kelly McCann, for Commission-Direct

Q. Were you familiar with the type business your company was doing at that time? A. Yes.

Q. Class of customers? A. Yes.

- Q. What class of customers were you dealing with at that time? A. It was mostly service stations.
- Q. Were you dealing with a greater number or greater percentage at that time than you are today? A. Yes.
- Q. You may answer. A. Yes, we were doing a larger percentage I believe with service stations than we are now. However, it is really very (3725) small. It is practically the same. I think a little larger.

Q. Are you talking about the percentage of customers or the percentage of business? A. Well, it would be about the same. The percentage of business the same as the customers.

- Q. Were you selling to a greater number of Texaco stations in 1950 and 51? A. Yes.
- Q. Can you state roughly the number you sold at that time? A. During that period—during the early 1950s I know we have sold as many as 19 Texaco stations that were operated on a lease arrangement.
- Q. And today! A. Today it would be approximately 5, but we don't sell those a hundred percent. We only have one Texaco dealer now that we sell 100 percent, to my knowledge. Of course, the salesman could verify that. I don't recall on all these accounts, or this would be—I would want this confirmed.

Q. Would your salesmen have this information? A. I believe they would. That is in the City of Dallas.

Q. Can you name the accounts that are stocking your batteries? Do you have any objection to naming those accounts that are stocking your batteries? A. I really don't think we would be selling them long if we did.

## (3727) Cross examination by Mr. Barton:

- Q. You have a number of other battery manufacturers and distributors in this area who have salesmen out in the field (3728) contacting the service stations do you not? A. That's right.
- Q. Including Allied Battery Company? A. That's right.
  - Q. And Interstate Battery System? A. That's right.
- Q. And of course the Electric Storage and Battery Company, distributors of Exide batteries? A. Yes.
  - Q. And the Electric Auto-Lite Company? A. Yes.
- Q. And the Globe Union? A. No. Globe does not so-
- Q. They have batteries but they do not solicit? A. They do not sell as far as I know to service stations and garages.
- Q. You mean they don't have men going around like you have? A. No.
  - Q. How about Gould National? A. No.
- Q. Green Manufacturing manufactures the Excel battery? A. Yes.
- Q. They have men traveling around to the service stations? A. No. They sell I think—from observation—all their output through local distributors.
- (3729) Q. Who have men going around to service stations? A. I suppose so.
  - Q. And the Hobson Electric Company? A. No.
  - Q. You know the Vitalic Battery Company? A. Yes.
  - Q. Who sells Southland batteries. A. Yes.
- Q. And the Southland Battery is a very strong competitor of yours in this Dallas area, as well as in the entire territory? A. Yes.

Q. Southland batteries really are sold more in this area than are your batteries? A. In the City of Dallas I don't think so, now.

Q. In the area they have more than you? A. Yes, they

are a larger company than we are.

Q. And they are a local company? A. Right.

O. With a manufacturing plant in Dallas! A. Right.

Q. Of course the Willard battery is sold here? A. In Dallas or the territory?

Q. In Dallas and the territory? A. Very few. Very few in Dallas. There are some in the territory but very few.

(3730) Q. And the Hargett Electric Company distributes Delco batteries? A. Yes, they distribute Delco batteries. But those people, sir, are not as rugged competition as some of the others are.

Q. You mean they don't have as many men out in the field as you do? A. I don't know that they sell any to wholesale accounts that we compete with. They may or

may not.

Q. Motor Mart sells batteries to service stations doesn't it? A. They could. They very well could. I have per-

sonally never run into one that they were selling.

Q. But you are not in the field very much. A. I am out in the field all the time, but not just here in the City of Dallas.

Q. And Pasher Auto Parts, they are selling batteries in competition with you to service stations? A. I have never heard of that company. But that could very well be.

Q. How about Terry Auto Supplies? A. Yes.

Q. Generator Service Company? A. You see, you are doubling up. You are talking in terms of Allied and Southland. That is one. You are talking in terms of Generator Service and Willard, that is one, too.

Q. You think Generator sells Willard batteries to service (3731) stations? A. Yes.

Q. How about Reliable Battery Company? A. Yes.

Q. They sell the Reliable battery! A. Yes.

Q. Is Reliable more widely distributed than Continental? A. I would say no.

Q. You think it is equal do you? A. Yes.

Q. How about Mechanics Auto Supply? A. I am not familiar with them. I don't know them.

Q. You are not familiar with their solicitation of service stations?

#### (No response.)

Q. How about Beardon Johnson? They sell batteries? A. I don't know any of these companies.

Q. How about Meggs? Do they sell batteries? A. I

think Meggs sells batteries?

Q. There are a number of other automotive parts and accessories houses besides these I have named which have been contacting service stations in the Dallas area selling batteries, aren't there? A. They have batteries among their other items, but they do not push batteries and their battery sales, I believe, will (3732) be very small. In fact, I don't know of very many accounts on these parts stores—that the parts stores do sell.

Q. In other words, you say they are primarily interested in parts? A. Parts. They try to sell batteries, too. But I think their primary business is parts.

- Q. Their main sales effort goes into the selling of the parts? A. That would be my guess. And it is strictly a guess.
- Q. You didn't have a dry charge battery in 1954? A. Yes, sir, we have had a dry charge for, I guess, four or five years.

Q. You didn't have it on your price list? A. No. We did not have it on our price sheet.

Mr. Barton: I think that is all.

Cross-examination by Mr. Royall:.

- (3737) Q. We were talking about Mr. Tosch. Coming now to leased stations, you sell Jolly, do you not? A. Yes.
- Q. And you sell him 100 percent, don't you? A. Yes, we buy all our gas from him. It is a trade-out proposition there. He does our service work for us and we supply his batteries.
- Q. He displays your batteries openly, does he not? A. Yes, he does.
  - Q. Do you know C. W. Williams? A. Yes.
- Q. He is a leased account? A. I think he is. I assume he is.
- Q. Lask if he doesn't openly display Continental batteries? A. I have never called on him. He has only been buying our products for two weeks; you see.
- Q. You haven't seen his station? A. No. I know where it is but I haven't seen his batteries.
- Q. How long has he been in business? A. He has been in business for years and years.
- Q. And you sold him the last two weeks? A. We sold him years and years ago when he had his old (3738) building. When a new building was put up we lost out. He ordered some batteries two weeks ago.
  - Q. Do you know Walter P. Apple Station! A. Yes.
  - Q. You sell him? A. No, I don't believe so.

- Q. Who is your salesman who would cover his territory? A. Mr. Cavett.
  - Q. He is not here? A. No, but we do not sell Mr. Apple.
- Q. Is it possible that he might have bought from someone other than you? A. Not in the city, no. Well, I mean he could have, but we don't have anyone else wholesaling batteries here, Continental batteries. So it is doubtful that he did.

(3739) Q. Could he have been sold by a wagon jobber?
A. No, sir.

Q. How about cash sales? A. No, sir. To the best of my knowledge—and I am in the business every day—we do not sell Mr. Apple batteries. We did formerly. He was a very good account of ours but we lost him.

Q. And you don't know that you sold him batteries in 1955 and 1956? A. To the best of my ability we have not

sold Mr. Apple any batteries during that period.

Q. Isn't it a fact that you sell Mr. B. S. Colgin and sold him an order in December 1956? A. We sold him one battery, I believe. I could check. I took an order for one battery, from Mr. Colgin in December 1956.

Q. And you have sold him previous to that time? A. He used to be one of our finest accounts here in the city. But he is no longer. He does not stock our batteries any

more.

- Q. Is Colgin one who discontinued in 1954? A. Sir, Mr. Colgin several years ago was a very fine account. He just dried up on us.
  - Q. When did that happen? In 1954? A. No, sir. He started drying up in 1954, '55 and then (3740) 1956.
    - Q. Started in '54.! A. Yes.

- Q. You know, do you not, that Firestone were the first to generally offer the dry battery, were they not? A. I believe that is right.
  - Q. And that was in 1954? A. I believe that is right.
- Q. What happened about the battery market, your battery market in 1951? You mentioned that year. Did it to up or down? A. In 1951? I would have to check the figures but I believe we went up.

Q. Have you got your present price list on batteries?

A. Not on my person.

(3741) Q. It would be no difficulty to get it to us? A. No. sir.

- Q. Have you got the first price list you put out sometime last year which first advertised dry batteries? A. Yes.
- Q. You could get that for us without any difficulty? A.
- Q. Have you got a list of all the service stations you sold in Dallas? A. That we are selling now?
  - Q. Yes. A. Yes.
- Q. I believe that might not include cash sales? A. This includes cash and charge.
- Q. You haven't the figures on the amount of the cash sales I believe your father said? A. No, we don't.
- Q. Would that be available readily? Or will it take time to get it? A. No, it would be available.
- Q. But you would have to tabulate it, would you? You don't carry that list, do you? A. I know the customers that we sell in the city of Dallas now.
- Q. Of all stations, all types of stations? (3742) A. No, I don't have that information with me. It would take some time to get that information.

#### Kelly McCann, for Commission-Redirect

#### (3745) By Mr. Barton:

Q. How many service station customers do you have in Dallas! A. I don't have that exact figure. It would be close to one-hundred.

#### (3746) Redirect examination by Mr. Dias:

Q. You were asked for the definition of a leased station. What other type station is there, Mr. McCann? A. We call an independent station one that the property is owned—not owned by the Texas Company, and the man either has his own building or owns the lease.

Q. You mentioned—you were asked about C. W. Williams. Does he own his own property? A. I don't know.

Q. When did you lose the Apple account? A. It was in the early 1950s; about 1951, I think, or maybe '52. I am just not positive. It was somewhere in that period.

Q. You mentioned Colgin drying up. Did he give any reason for drying up?

(3747.) Q. When did he stop dealing with you! Let me ask you: Did he formerly stock on a full basis, buy for stock? A. He formerly stocked ten or fifteen Continental batteries.

Q. When was that, roughly! A. That was until ap-

proximately a year and a half ago.

Q. When did he start blying one battery at a time?

A. From that period on. It is just on an emergency basis on Saturday afternoons or occasionally we get an order out of him. But very seldom.

Q. As sales manager did you call on him? A. Yes, I

did.

Q. Did you try to determine what happened to his business? A. Yes.

## Kelly McCann, for Commission - Recross

#### Q. What did he say!

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. I don't recall the actual conversation. I wouldn't attempt to try to repeat it in Mr. Colgin's own words. But the gist of the conversation was that he was going to handle Firestone batteries.

Q. Is that all? A. Yes.

### (3748) Recross examination

#### By Mr. Barton:

Q. Of those 100 stations to whom you sell, do you get all of their business? A. Approximately a hundred that we sell, and we get the majority. We supply all their batteries.

Q. The majority of those hundred? A. Yes.

Q. Buy exclusively their batteries from you! A. Yes.

## (3749) By Mr. Royall:

Q. How many total Texas stations do you sell? A. Leased and independent?

Q. Yes. A. Throughout all our-

Q. What you call independent, yes. A. Throughout all our territory?

Q. No, in Dallas. About 20, don't you! A. I have a list of that here.

No, sir, I believe it is 10.

Q. Is that all! A. Yes

Q. Didn't you say there were ten leased stations? A. No. These ten are not leased. Were we talking about the city of Dallas or other territory?

Q. What territory were you testifying on direct about? I thought it was Dallas and vicinity. A. Vicinity, but that is our trade area, around Dallas. I am talking now that we sell, to the best of my records here, ten Texaco service stations within the city limits of Dallas.

Q. Of all kinds? A. Yes, of all kinds. Wait a minute

now. Let me check that to be sure. Ten or twelve.

(3750) Q. I ask you to refresh your recollection, if you don't sell at least 16? A. Here in the city of Dallas?

Q. City of Dallas, yes, sir, of all types. A. Texaco

service stations?

- Q. Yes. A. If the records given to me are accurate, we don't.
  - Q. Who gave you the records? A. Our city salesman.
    - Q. Where is he? A. He is on the territory, working.
- Q. So this is his knowledge and not yours? A. Well, it is the best of my knowledge, too. I think I know all these accounts. I know all these accounts and I don't know of any other that we sell here in the city.

(3751) C. F. SANFORD, JR. was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

#### Direct examination by Mr. Dias:

- Q. Please state your your full name and home address for the record? A. C. F. Sanford, Jr., 3109 Moulton Street, Greeneville, Texas.
- Q. Did you at one time operate a Texaco station? A. I did.
- Q. Will you tell us when you were in that station? A. I was in there from November 1953 to November 1955.

Q. Do you have a copy of your lease with you? A. I do. Q. May I see it?

(The witness produced a cocument.)

Mr. Dias: I would like to have marked for identification as Commission Exhibit 156, a document dated (3752) November 11, 1953, from the Texas Company to Mr. Sanford, signed "I. G. Morgan, Division Manager, Texas Company" announcing the execution of a lease with the Texas Company.

And as Commission Exhibit 157-A and B a lease dated the second day of November 1953 between the Texas Company and C. Fagg Sanford, of Greeneville, Texas.

## Bu Mr. Dias:

Q. I will ask you, Mr. Sanford, is this letter as I have described it a letter of acknowledgment from the Texas Company that you have entered into a lease agreement with them? A. It is.

Q. And is this document, 157-A and B, the lease form which was executed by you? A. That is right.

Q. And the Texas Company! A. Yes.

Mr. Dias: I offer that in evidence at this time? Mr. Royall: No objection.

Hearing Examiner Kolb: The documents will be received in evidence as Commission's Exhibits 156 and 157-A and B.

(The documents heretofore marked Commission's Exhibits 156 and 157-A and B for identification, were received in evidence.)

. (3753) Mr. Dias: I would like to have marked for identification as Commission Exhibit 158 a letter dated November 11, 1953 from the Texas Company

signed "I. G. Morgan," to Mr. C. Fagg Sanford, transmitting a sales agreement with the Texas Company.

And marked for identification as Commission Exhibits 159-A and B a document entitled "The Texas Company, agreement of sale," signed by C. Fagg Sanford as purchaser, and by C. D. Hall, the Texas Company, as seller.

And marked for identification as Commission Exhibit 160-A and B a Texaco document entitled "Selling schedule—motor lubricants, dealer prices effective August 1, 1953."

(The documents referred to were marked Commission's Exhibits 158, 159-A and B, and 160-A and B for identification.)

#### By Mr. Dias:

- . Q. Is this the selling agreement that you executed with the Texas Company? A. It is.
  - Q. And is this the price arrangement? A. It is.
- Q. Is this Exhibit 158 the letter you received with those documents? A. It is.
  - (3754) Mr. Dias: I offer those in evidence at this time.

(The documents heretofore marked Commission's Exhibits 156, 157-A, 157-B, 158, 159-A, 159-B, and 160-A and B for identification, were received in evidence.)

## By Mr. Dias:

Q. Mr. Sanford, did you handle TBA products in your station? A. I did.

Q. What brand? A. Different brands.

- (3755) Q. When you first moved in the station what brand did you handle? A. I had different brands when I went in.
- Q. What make tires did you handle? A. There were Firestone.

Q. Did you have any others? A. No. sir.

- Q. How about batteries? When you first moved in the station? A. I had Firestone.
  - Q. And accessories? A. Different makes.
- Q. Take some filters. What brand filters did you carry? A. Fram.
- Q. Did you carry any Firestone filters? A. I don't believe there were any there.
- Q. How about fan belts? A. I had some Firestone fan belts and Gates, I believe, were the two.
- Q. Where did you get your original stock of equipment? A. From the man that sold the station.
- Q. Did you ever buy any other type of tires while you were in that station? A. None to speak of. I might have bought one, if a man drove in and wanted a certain tire, and sold it, and got (3756) him a special tire for that.
- Q. How about batteries! Did you ever handle any other make of battery! A. Yes, I did.
  - Q. What make was that? A. Continental.
- Q. When did you—did you stock Continental batteries?
  A. I did.
- Q. When did you start stocking them? A. I think it was approximately six months after I had been there.
- Q. Did any Texaco official say anything to you about those batteries? A, Yes, they did.
  - Q. Who! A. There was the zone manager.
  - Q. Do you remember his name? A. I don't offhand.
- Q. What did they have to say about the battery? A. Well, they said they would rather that I handle Firestone.

#### JA 1014

### C. F. Sanford, Jr., for Commission-Direct

- Q. Did they say anything else? A. At that time they didn't.
- Q. He didn't at that time. Did he ever say anything later about these Continental batteries? (3757) A. Later when the different zone man come in he did.
- Q. What did he say? A. Well, he more or less insisted at the latter part that I handle Firestone batteries.
- Q. Can you give us the time that that occurred? A. About three months before I went out.
- Q. What did he say to you at that time in regard to those batteries? A. He told me that I would either handle Firestone or not to expect my contract to be renewed.
- Q. He was referring to your lease on your station, was he? A. Yes.
- Q. Did you continue to carry the Continental battery?

  A. I did.
- Q. And were you subsequently notified of a cancellation of your lease? A. I was.
- Q. Who was the zone manager? Do you recall? A. Mr. Charley Swan.
- Q. Do you have a copy of that termination with you? A. I do.

(The witness produced a document.)

Mr. Dias: I would like to have marked for identification as Commission Exhibit 161 a letter dated October 12, 1955, from the Texas Company, signed C. D. Hall, to C. Fagg (3758) Sanford, notifying him of the cancellation of his lease effective October 31, 1955.

(The document referred to was marked Commission Exhibit 161 for identification.)

Mr. Dias: I offer that document in evidence.

Mr. Barton: Your Honor, I take it I have a continuing objection which was made at the beginning with relation to Texas/Firestone?

Hearing Examiner Kolb: That is right.

Mr. Barton: And that the record so states? Hearing Examiner Kolb: Is there any objection?

Mr. Royall: I have a continuing objection on the part of Firestone, too.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 161, subject to a motion to strike by Goodrich.

(The document heretofore marked Commission Exhibit 161 for identification was received in evidence.)

## (3759) By Mr. Dias:

- Q. You moved into the station in November 1953? A. That is right.
- Q. At that time you carried Firestone tires? A. That is right.
- Q. Did you also carry Firestone batteries when you first moved in? A. I did.
- Q. How long did you carry the Firestone battery. A. I had a few Firestone batteries practically all the time I was there.
- Q. Did you ever carry the Firestone battery exclusively? A. Not except right at the first.
  - Q. For how long? A. Approximately six months.
- Q. During that time did you receive any complaints from the Texaco Company? As to your operations? A. Not right at first, I didn't, not that I can remember.

- Q. What sort of gallonage were you pumping when you first moved in? A. Around 14—12 to 14,000 gallons to start.
  - Q. Did you increase that gallonage! A. I did.
- Q. What was your peak and when? Can you give us some idea? A. Around 20,000 gallons.

(3760) Q. Can you tell us when you reached that peak?

A. I was about a year later.

- Q. Did you maintain that level of gallonage? A. I have maintained around 16 or 17,000.
  - Q. Over what period? A. All the time I was there.
- Q. Are you giving us an average figure now? A. Approximately average, I think.

Q. Those were monthly figures, were they not, that you gave us? A. That is right.

Q. When did you first start buying Continental batteries? A. About six months after that.

Q. Is that roughly around May or June 1954? A. That is right.

Q. And how soon after that was it that you were told by that Firestone manager that you should carry Firestone?

Mr. Barton: Object.

. Mr. Royall: Object. That is not what he said. It is not a correct quotation as I recall what the witness said.

#### (3761) By Mr. Dias:

- Q. What did the Firestone man say in May or June, 1954, about those Continental batteries? A. That he thought I ought to handle Firestone.
- Q. And that was May or June that he made that statement? A. It was.
- Q. Did you continue to buy Continental batteries? A. I did.

Q. Can you tell us why you bought the Continental battery?

> Mr. Royall: Objection. Hearing Examiner Kolb: Overruled.

A. I bought them because they were quite a bit cheaper than Firestone batteries.

#### By Mr. Dias:

Q. Were they as good as Firestone?

Mr. Barton: Object. Mr. Royall: Object.

#### A. I think so.

Hearing Examiner Kolb: Objection overruled.

#### By Mr. Dias:

- Q. What type service did you receive from the Continental Battery Company on those batteries? A. How do you mean?
- Q. Did they come around and see you frequently on them, or infrequently? (3762) A. They came around frequently.
  - Q. How often? A. About once a month.
- Q. What did they do at that time in regard to your batteries?

Mr. Royall: Objection. Hearing Examiner Kolb: Overruled.

A. They would check my supply and if I had any bad ones or anything, they would replace them and give me adjustments on them.

#### By Mr. Dias:

Q. Did you ever have any dissatisfied customers with that Continental battery? A. None that I know of.

Q. Did you continue to carry the Continental then through November—through the time you were cancelled?

A. That's right.

- Q. Was that the occasion that Mr. Swan spoke to you about the Centinental battery? Was that the only other occasion on which anyone from Texas spoke to you about the batteries? A. Oh, it was brought up several times. But I couldn't tell you exactly when or exactly what was said.
  - Q. Can you tell me by whom? A. It was Mr. Swan.
  - Q. In what way was it brought up?
- (3763) A. He had told me several times that they handled Firestone batteries and that they thought—he thought I should handle them.
- Q. Were these statements made in your station? A. I am sure some were.
- Q. Where were some others made? A. At the bulk plant.
  - Q. Which bulk plant? A. At Greeneville, Texas.
  - Q. Who operates that bulk plant? A. Mr. Daniels.
- Q. Did anyone there hear any part of that conversation?
  Any of it? A. I am sure they did.
- Q. Who do you think heard it? (3764) A. I don't know.
- Q. Who was present when you had this discussion with Mr. Swan! A. I think Dan Daniels was present.
- Q. While you were carrying these batteries, what other accessories were you carrying? Or what accessories were you carrying? Can you name some of them? A. Fan belts, Fram—

Q. What make fan belts? A. Gates, I believe.

Q. How about filters? A. Fram.

Q. Spark plugs! A. I had AC and—what is the other one! Champion.

Q. How about radiator hose? A. I didn't stock many

radiator hose. I think what I had was Firestone.

Q. What about these other products you just mentioned? Were they Firestone products? A. No, they weren't.

Q. Where did you buy those? A. Locally.

- Q. From whom? A. Wholesale houses locally, in Greeneville.
- Q. Was anything ever said about those items? (3765)
  A. Yes, there were.

Q. What was said to you!

.Q. Who was it said anything to you about it from the Texas Company? A. Mr. Swan.

Q. Can you tell us roughly when that was? A. I would

say six months before I went out of business.

- Q. In other words, about May or June of 1955, is that correct? A. Yes. Then I was also told about three months—
- Q. About three months prior to that time that you went out of business? A. Yes.

Q. That would have been in August. By whom? A. By Mr. Swan.

Q. Do you recall what was said about those items? A. I was told that the bulk plant was going to handle that, and that they would like me to handle that.

Mr. Dias: Will you read that answer? (3766) (Answer read.)

#### By Mr. Dias:

Q. I don't understand that. They wanted you to handle what? A. Firestone accessories.

Q. In May or June, 1955, was that the first time Swan talked to you about these accessories? A. To my memory.

Q. Do you recall exactly what he said?

Mr. Royall: He just said.
The Witness: I just said that.
Mr. Dias: Will you read that?
(Record read.)

#### By Mr. Dias:

Q. Was any reason ever given you why your lease was cancelled? A. There was only reason given me.

Q. When was that? A. Just before I went out I asked Mr. Swan why did they let me go. I remember him saying that, "Put it this way: you are not a good station operator."

Q. And that was just before you left your station? A.

Q. How many hours a day did you keep that station open? A. 24 hours a day.

Q. Was that your idea? (3767) A. That was understood—

Mr. Royall: Objection, your Honor. Hearing Examiner Kolb: Objection overruled.

A: That was understood when I went into the station.

(3768) Q. Did you think you were a good station operator? A. I think I was an average station operator. Q. Did you keep your station clean? A. I think so.

- Q. You kept it open the agreed number of hours? A. I did.
  - Q. And you carried Continental batteries? A. I did.
- Q. Were there other Texaco stations in Greeneville, Mr. Sanford, at the time you were operating? A. There were.
  - Q. Do you know how many were there! A. About five.
- Q. Were they leased stations? Do you know? A. J. don't know really what the term 'lease' is.
- Q. You were operating under a lease. A. Well, no, I don't think any of the others were operating under the same conditions that I was.
- (3769) Q. Do you know whether or not the other station operators were ever—what TBA did the other station operators handle? Do you know? A. Various types.
- Q. Do you know whether or not those other station operators received any complaints from the Texas Company? A. No, I don't.

Mr. Barton: Objection.
Hearing Examiner Kolb: Objection overruled.

#### By Mr. Dias:

- Q. Did you say you did not know? A. I didn't know.
- Q. When did you actually leave the station, Mr. Sanford? A. I believe it was November 19.
- Q. What disposition did you make of your stock, the Firestone tires, for example? A. I sold it to the man that bought the station from me.
- Q. Did you have any Firestone batteries at that time?
  A. I don't think so.

(3770) Q. What about your other brand batteries? What did you do with those? A. I sold them back to the company.

Q. Which company? A. Continental.

Q. You sold him your Firestone tires, is that correct?

A. That's right.

Q. Did you have any accessories left over? A. I did.

Q. What did you do with those? A. I sold most of them to the man that bought me out.

Q. Did you attempt to sell him your Continental batteries? A. No, I didn't.

Q. Did any Texaco representative make any statement to you (3771) in regard to those Continental batteries?

A. They did.

Q. What did they say?

Mr. Royall: Objection, without more information.

Hearing Examiner Kolb: Objection overruled. You may state who you talked to.

A. I talked with Mr. Charlie Swan.

#### By Mr. Dias:

Q. What did he say about those batteries? A. He asked me to dispose of those batteries before I sold the station.

Q. Is that all he told you? A. That is all.

## Cross examination by Mr. Royall:

Q. Mr. Sanford, you got your petroleum products from Mr. Daniels, didn't you? A. I did.

Q. He is the man who sold them to you and the man you contacted about getting them? A. That's right.

Q. You dealt direct with him and not through any Texas salesmen? You dealt direct with Mr. Daniels? A. In ordering my merchandise?

(3772) Q. Yes. A. Yes, sir.

- Q. When did you first meet Mr. Charlie Swan? A. After he came on the zone.
- Q. That was in May? A. I don't remember the exact day.
- Q. It was just a few months before you got out? A. That's right.
- Q. And you had been there about a year and a half?
  A. That's right.
- Q. Did you know him after that? Did you see him from time to time after that? A. Oh, yes.
  - Q. Does he live in the same town or not? A. He does.
- Q. Had he lived in the same town before where you had the station? A. I don't know.
- Q. Mr. Swan came there and he made a number of suggestions to you about improving the station, didn't he? A. He sure did.
  - Q. Sir! A. He did.
- Q. You got the impression he was trying to help you, didn't you? (3773) 'A. I do.
- Q. A pretty nice fellow, isn't he? A. Mr. Swan is all right.
- Q. I think you said—I am trying to say it just as you said it—that at one time—I think this is what you said—he thought you could handle Firestone—that we handle Firestone batteries and he thought you should handle them. Is that what you said? A. As well as I remember.

- Q. And you said on another occasion, "I would like you to carry Firestone batteries." Is that what he said? A. Yes. He fold me that times.
- Q. On what occasion did he say any more than that? If he did? A. He told me more than that at the bulk plant in Greeneville.
- Q. And that is the only time? A. That was the only time I was just threatened, yes, I think so.
- Q. And that is the one you told about a moment ago? Is that right? A. Yes.
- Q. Who was present at that time. A. I think Mr. Dan Daniels was present. He was working over on the desk. (3774) Q. You know Mr. Daniels? A. I do.
- Q. You dealt with him for a number of years, haven't you? A. That's right.
- Q. You had bought from him and he was one that got you interested in the station, wasn't he? A. I think so.
- Q. And you and he got along well together? A. We never had trouble.
- Q. Was anybody else present besides those two? A. That is the only ones I remember.
- Q. Mr. Daniels is a good, reliable man, isn't he? A. . Mr. Daniels?
- Q. Yes. A. In my dealings with him he has been reliable.
- Q. You said—I think the question was did you get along all right, and you said, "There weren't but a few complaints." What were those complaints? Do you remember what they were? A. I don't know what you are talking about now.
- Q. You don't remember any complaints? A. About what.
- Q. I am asking you about what—whether there were some complaints after you went in the station. About the

way you ran it. A. I don't remember any complaints. I remember talking. (3775) He came down and asked me.

Q. Let me ask you about these and see if you recall them.

Do you remember that they spoke to you about not keeping the restroom with soap and towels? A. I think the station was clean all the time.

Q. I didn't ask you that. But you remember him speaking to you a couple of times about that? A. Not about keeping the station clean. I don't remember that.

Q. Do you remember about the soap and towels? A. I

remember about the soap and towels.

- Q. And you remember that they complained about the shelves being dirty and not used, don't you? A. That was corrected.
- Q. When they spoke to you about it you had on the shelves, did you not, messy clothing and even a used commode brush, didn't you! A. That I wouldn't know.
- Q. And I ask you if even after they spoke to you that wasn't there and left there and your successor found it?

  A. I don't believe that.
- Q. Did they speak to you about having insufficient help in the station? A. I don't remember that.
- Q. It was a fact there were times, a long time there, a (3776) considerable time when there wasn't anybody there but you and one colored janitor, isn't it? A. No, that is not.
  - Q. Isn't that right? A. No, sir.
- Q. With respect—weren't there plenty of times when you couldn't give prompt service? A. No, sir, I certainly don't believe that.
- Q. You did have complaints about the service you gave, as to washing and polishing, didn't you? Continuing complaints? A. I don't remember that.

Q. You don't remember complaints about serving the cars or scarring the cars? A. I don't know what you are referring to.

Q. You don't remember that? A. No, sir.

Q. They did speak to you about that, didn't they?

A. Not that I know of.

Q. You also frequently ran out of just the simplest merchandise that people wanted, didn't you? Fan belts?

Didn't you? A. I think you are mistaken.

Q. Don't you remember an incident when a man came into the station and asked you for a fan belt, and there was nobody there but you, the colored man having gone somewhere. He (3777) asked for a fan belt! A. I don't have any idea what you are talking about.

Q. You don't recall the case? A. No, sir, I don't.

Q. You don't recall the case where another person came for a radiator hose and there was nobody there but the colored man and the man had to keep the station while the colored man went down the street to find it? A. I don't, sir.

Q. You don't remember a thing about it? A. No, sir.

Q. They did complain to you about not keeping accurate books and records, didn't they? A. Who complained?

Q. Didn't both Mr. Daniels and later, when Mr. Swan came there, complain about it. A. Not to my knowledge.

Q. You didn't keep an accurate record—you didn't even check your gas against the measuring stick, did you? A. Daily.

Q. Siri A. Daily.

Q. In spite of a—daily, the gas leaked for a month into an adjoining building and you didn't know anything about it until somebody reported it to you. Is that right? (3778) A. I complained, I would say, six months before that happened; about my gas.

- Q. You could have checked to see by measuring, and your records, to see whether it was leaking couldn't you? A. You try to check a 2,000 gallon tank and be five gallons off.
- Q. Do you mean in six months you couldn't tell the difference between whether you had had a leakage, constant leakage by checking your measuring stick and the records? Do you mean to say that? A. I remember I complained several times.
  - Q. I didn't ask you about your complaining. I asked you are you telling us now that you could have gas leaking as you say for six months and you couldn't tell from your measuring stick and your records whether you were losing gas? Do you mean to say that? A. I knew I was losing gas.

Q. Did you do anything about it? A. I told the Texas Company. I don't know—

Q. You were running the station, weren't you? A. That's right.

Q. Didn't they ask you to solicit customers, by 'phone and otherwise, and that you neglected to do it? A. I would say I made thousands of calls trying to solicit business, and I made hundreds and hundreds of contacts trying (3779) to make business.

Q. Didn't they complain to you about your lack of doing so? They did speak to you about it? A. I don't remember them complaining about it.

Q. They spoke to you about it? A. I remember it being brought up.

Q. You remember him also bringing up the fact that they had a program in the town of notifying you when anybody moved to town. And they spoke to you about not carrying that out and following up on it, didn't they? A. Not that I know of. I don't remember that.

Q. You had quite a hard time with your finances in various ways, didn't you? A. I was never rich.

Q. Sir! A. I was never rich, no, sir.

Q. I know that. But you were having a hard time keeping the station going, weren't you? A. I wouldn't say it was a hard time, no, sir.

Q. You delayed the payment on deliveries frequently,

didn't you! A. Not frequently, no, sir.

Q. And they would have to follow up now and then on it? A. Not frequently.

Q. They did a number of times? (3780) A. They

have done it. But not frequently.

Q. And they complained to you about that, didn't they?

A. Yes, sir, they did.

Q. And also you gave a number of checks that had a little trouble, didn't you? At least 8? A. What kind of

trouble, sir?

- Q. Didn't you give checks for gasoline, drawn on a bank different from the one that Mr. Daniels used—and I want you to think about this carefully—didn't you give checks, and those checks were turned down by your bank and sent back to the bank, Mr. Daniels' bank from which they were deposited, and you had to make them good! A. That was taken care of.
- Q. But that happened about 8 or 10 times, didn't it?

  A. No, sir.

Q. Eight or ten times a year? A. I have no idea.

Q. They complained to you about that? A. There were never any hard feelings over it.

Q. They complained about it a number of times, didn't

they? A. They were always made good.

Q. You knew that was causing Mr. Daniels a lot of worry and trouble? A. I don't think it caused him a bit of trouble.

Q. You also on occasion did a little switching of your (3781) gas between the pumps, didn't you? A. I had done it.

Q. You had done it? A. Yes.

Q. You would take the Fire Chief, the cheaper brand, and put it in the Sky Chief tank which sold for a higher price, wouldn't you? A. I think somebody misinformed you.

Q. You didn't do that? A. No, sir, I didn't.

Q. Do you mean to tell me you didn't put Fire Chief in the Sky Chief tank? A. No. Wait a minute. I think it was done one time. When that gas leak came up. I think they emptied my Fire Chief into the Sky Chief tank and it was done then.

Q. You sold it as Sky Chief? A. No, sir:

Q. Didn't you admit that to Mr. Daniels' brother? A. I don't know what you are talking about.

Q. When did that happen? A. Whenever they took the tank out and put in a new tank.

Q. Didn't they find out about it and complain to you about it? A. They did it. I didn't do it.

Q. Did you complain about it? Did they complain to you (3782) about it? A. They did it. I didn't do it.

Q. Didn't you deny, just like you did a minute ago, first deny that you did it, and then later admitted it? A. I don't know what instances you are talking about?

Q. Didn't you a moment ago say you didn't do it, and then on second thought say yes, it happened once. A. Whenever they had the leak in the tank it happened.

Q. Didn't you do the same thing with them; didn't you first deny the same thing you have done here today, deny you did it and when confronted with the facts admit it to Mr. Daniels' brother. A. They changed the gasoline. I didn't change it.

Q. Before you went in that station there was—you may have been there two or three months and then there was somebody else in there before that? A. Yes.

Q: Is that right? A. That's right.

Q. The man who had been there before that had averaged a little over 23,000 gallons a month, hadn't he?

Mr. Dias: I object. How would this man know that?

Hearing Examiner Kolb: If he knows he can answer.

## By Mr. Royall:

- Q. Didn't he? (3783) A. Yes. He did quite a bit before that.
- Q. When you went in there you said to these people, of your own volition, that your own objective was that you would do that good, you were sure you would do that good or better, and that is what you set as your figure, didn't you! A. I don't remember that.

Q. You did talk to him about it, didn't you? A. Not that I know of. I don't remember a thing about it.

Q. Do you mean you didn't talk to him at all about the gallonage you expected to have? A. I don't remember.

(3784) Q. As a matter of fact, you averaged about 16,000 gallons—plus a little more in the summer months—but you averaged about 16,000 gallons, which was 25 to 30 percent less than the other man had had, didn't you? A. I had to build new business. This man took his business with him, because he was a very good station operator and whenever he left he took his business with him.

Q. But for the last year you didn't average—you just made by a gallon or two 17,000 after your second year, didn't you? A. I don't know the exact amount; somewhere in that neighborhood.

Q. You know that even after your first year they were talking—you knew that they were considering cancelling your first lease after one year, didn't you? A. No, I didn't.

Q. And it was after that time, after the one year expired that Mr. Swan came down there for the first time and talked the situation over and made suggestions, didn't he! A. Repeat that.

Q. It was after the first year had expired before Mr. Swan came down there, wasn't it? A. Quite a bit after

that, I think.

Q. Three or four or five months! A. Yes.

(3785) Q. Is that right! About four or five months!

A. Five or six. I don't know.

Q. And before Mr. Swan came Mr. Daniels had been talking to you about these various matters we have discussed, keeping the station, sufficient supplies, and everything, hadn't he! A. I don't know what time you are referring to!

Q. Mr. Daniels had discussed the difficulties you were having with the station often, hadn't he? A. I talked with

him, yes.

Q. He talked to you, too, didn't he! A. I am sure he did.

Q. And Mr. Swan came there for the express purpose of trying to help you get over these difficulties, didn't he? A. I think so.

Q. This battery, Continental battery that you were handling, was that their highest grade? A. I handle all their battery line.

Q. All! A. Yes.

Q. But you principally had one of their cheapest grades, one that sold for \$7 and some cents? A. No. I sold lots of good batteries.

Q. But that was your principal battery, wasn't it? A.

No, sir.

(3786) Q. For a time— A. I didn't buy any more of those batteries than I did other batteries. I sold lots of them.

Q. For a time wasn't it the only battery that you had in the station? For months or weeks at least? A. No, sir.

Q. How many people came around to replace the batteries? You said people came around there and they replaced batteries. How many of them came? A. Who are you talking about?

Q. You said folks came there about replacing the batteries. How many came? Or regarding them or getting adjustments. How many came? A. They came once a

month. Are you talking about-

Q. I mean customers. Did the customers come? A. Why yes. Any time you sell batteries you are going to have trouble with batteries. Not always the battery's fault either, but still you have to make adjustment with them.

Q. And you say Mr. Swan told you that you were not a good station operator, and I believe your answer was that you thought you were an average station operator. Is that right? A. I would say I was above average.

Q. You have gone above average since you testified be-

fore? A. I am going above average.

Q. You are moving forward. You never handled any dry (3787) batteries, did you? A. Yes, sir, I did.

Q. When? A. When they came out.

- Q. Not when they first came out, did you? A. I think, yes.
- Q. Did you handle Firestone dry batteries? A. I handled a few.
  - Q. Did you handle any after that? A. Sure.
  - Q. Who did you buy those from? A. Mr. Daniels.
- Q. You had handled Firestone before you ever came to that station, hadn't you? A. Yes, I have.

- Q. And you were the one selected Firestone originally, weren't you? A. Firestone what?
- Q. Firestone products? When you were working with the Banks Tractor Company? A. We handled Firestone tires.
- Q. Were you in charge of the Banks Tractor Company?
  A. I worked there.
- Q. Weren't you the sort of manager? A. I was just the bookkeeper.
- (3788) Q. But you did the buying? A. I did some of it.
- Q. You did that part of it that bought Firestone? A. Yes, sir.
- Q. I will ask you if late in 1955 if there wasn't a complaint about you having vending machines in your station handling contraceptives, and if that complaint didn't come from a Methodist minister? A. I was told that.
- Q. I will ask you if after it was brought to your attention if you didn't put a second vending machine of the same kind into your station, and if you weren't spoken to about the unusual thing of putting in two? A. No, sir. There was two machines in there when I had the complaint:
- Q. You put in one and then you added one, didn't you?

  A. That was before Mr. Swan's time.
- Q. You put in one before Mr. Swan's time and you added one before Mr. Swan's time? A. No.
- Q. And you were asked to remove those machines and refused to do it? A. No, sir, I wasn't asked to remove it, that I remember.
- Q. It was suggested that you remove them? A. Not that I remember.
- (3789) Q. And you were told there was a complaint about them? A. I was told there was a complaint about them.
- Q. And you didn't remove them? A. As far as I know, I wasn't asked to remove them.

Q. That was shortly before you got out of the station? A. No, sir, that was a long time. I would say six months before.

Q. And they still stayed in there? A. That is customary in stations. I think if you will go around stations—

Q. Customary to have two? A. You will find them in lots of them.

Q. You knew that that was not approved by the people who were talking to you from Texas and your consignee, didn't you! A. I don't think they disapproved too much.

Q. They spoke to you about it, didn't they! A. I re-

member about the complaint.

Q. Let me ask you this last question: You sold Firestone tires not only at Banks but you also sold them and other Firestone matters with the Sulfa Springs Farm Store! A. I did.

\* Q. That was long before you went in this station? A.

Right.

Q. Mr. Daniels was your consignee? He was the consignee (3790) who sold your gasoline? A. That is right.

Q. And your transactions on that were with him? A.

That is right.

Q. And your transactions with TBA were with him in part, weren't they? A. Well, partly.

Q. He handled Firestone TBA, didn't he! A. I think

a few. .

Q. Let me ask you this: You worked for the Crawford Drug Company in 1949, didn't you? A. I worked there a little bit.

Mr. Dias: I object.

Hearing Examiner Kolb: Overruled.

## By Mr. Royall:

Q. Then you moved to the Banks Tractor Company? A. No, sir, you are very confused.

Q. Where did you move from the Crawford Company?

A. I moved—I bought the station.

Q. That was the second time you were with the Crawford Drug Company, wasn't it! You were there twice! A. No, sir.

Q. Where did you first work? A. I think the first job

I ever had was International Milling Company.

(3791) Q. When was that? 1949? A. No, that was back in 1948.

Q. What was the name of the company? A. Interna-

tional Milling Company.

Q. Where did you go next? A. I would have to-

Mr. Dias: Your Honor, I don't see the relevancy of this at all.

## By Mr. Royall:

Q. Where did you go next? A. I don't remember.

Q. You mean you don't remember? You went to Sulfa Springs Equipment Company? A. I went to the Army

from the International Milling Company.

Q. I understand. Then from the Army into the International Milling. What was next? Did you work for Banks Tractor! A. I worked for Banks Tractor Company and went to school.

Q. You worked for Sulfa Springs Farm Stores?

That is right.

Q. You worked for Crawford Drug Company! A. I worked there about a month or two months maybe.

Q. And then in 1953, which was four years after 1949, you went to the A. What four years after 1949?

(3792) Q. 1953 is when you made this lease, isn't it?

A. Yes.

Q. There were four years in between 1949 and 1953. In that time you had worked five places in four years. A. I went to work with Banks Tractor Company, I think it was in '46, I believe. And I believe I worked for International Milling Company back in—it was right when I got out from high school.

Q. Did you work any other places in that period? A. I

don't remember.

Q. You don't remember. What are you doing now?

Mr. Dias: I object. That is certain irrelevant, Hearing Examiner Kolb: Objection sustained.

#### By Mr. Royall:

Q. I will ask you if you are not selling these same vending machines about which there was a complaint in your station?

Mr. Dias: Objection.

Hearing Examiner Kolb: Objection sustained.

Mr. Royall: Your Honor, the purpose of this is to show frequent changes in employment.

Mr. Dias: He is out of the station now.

Mr. Royall: I know.

Hearing Examiner Kolb: You are talking about vending machines now, aren't you?

(3793) Mr. Royall: Yes, sir.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Royall: Your Honor, the vending machine matter was taken up as one of the things that they

were irritated about, the people he was working about, and that is one of the circumstances.

The Witness: I never received any bad com-

plaints from the company on that.

## Redirect examination by Mr. Dias:

Q. You ordered merchandise from Daniels. I think this came up later, too. Did that include TBA? A. Yes.

Q. What TBA items did you order from Daniels? A. I

have ordered tires and tubes and batteries.

Q. Did he carry a full line of Firestone TBA? Or did he carry others? A. He carried a good line of tires.

Q. Firestone tires? A. Yes.

(3794) Q. Other tires? A. I don't remember any other tires.

Q. How about batteries? A. He never had many bat-

teries. Maybe two or three usually in stock.

Q. How about accessories? Did he carry Firestone accessories? A. All the accessories I ever saw were some that he had there for years. That is all that I ever saw.

Q. Was it Firestone? A. Yes.

Q. The question was asked whether it wasn't true that the shelfs were dirty and not used? What were they supposed to be used for? What shelfs? A. Well, I think as a whole my shelfs stayed clean. I think they were used for display of TBA merchandise.

Q. What TBA merchandise did you display on those

shelfs? A. All that I had.

Q. What brands? Firestone? A. All different brands.

Q. Were there other competing brands of TBA—. A. Yes.

Q. (Continuing) —on the shelfs?

On that gasoline tank, did you say that you complained to the Texaco Company about the leaking tank? (3795) A. I didn't know whether it was leaking. I was complaining about loss of gasoline.

Q. How often did you complain to them? Did you call?

A. I would imagine on the average once a month.

Q. For over how long a period? A. About six months.

Q. What did they do about it? A. Nothing.

Q. Is that their tank? A. Yes.

Q. Is that your gas that was getting away! A. Yes.

Q. You paid for it? A. Yes.

Q. It has been brought out that you might have owed them money. Did you leave the station owing them any money? A. No, sir.

Q. Did you ever owe them any money for any period of time? What is the longest period of time that you can

think of? A. I had some tires on consignment.

Q. On consignment? A. Yes. And I don't remember what length of time. But when I sold the tires I paid for them.

Q\_Did you get them from the Texas Company? A. Yes.

(3796) Q. From the Texas Company? A. Yes.

Q. The tires? A. Yes.

Q. Do you mean they are selling TBA, too? A. I meant bulk plant, Daniels.

Q. We run into different situations. I want to be sure. On the trouble with checks that was mentioned, I think you said that it happened eight or ten times a year. Is that correct? Was it as often as that? A. I would have no idea.

Q. What sort of trouble was it? Was it just insufficient funds and then you made good? A. It was insufficient funds.

• Q. And you made them good? A. That is right; immediately.

Q. We have heard quite a bit about dry and wet batteries. Apparently you handled the dry batteries? A. I

have.

Q. In your opinion, is that any better battery than a wet battery? A. I think a battery is just as good as the

guarantee behind it.

Q. What is the advantage of a dry battery? Is there any advantage? Or what is the advantage of a wet over a dry? (3797) A. They both are good. I would say a battery is a battery. I see no—I would say the dry battery is a little easier to handle. I mean it is not as dirty, not as apt to spill acid on you as it would if you had a wet battery.

Q. How many dry batteries did you have? Do you

recall? A. I would say three.

Q. Did you have much customer demand for dry batteries? A. No.

Q. Does the benefit from a dry battery accrue to an

operator or a customer! A. An operator.

Q. What was your opinion when you took the station? Were you going into business for yourself? Was that your impression? A. That was my impression.

Q. Did you feel that you were an independent business-

man-

## Mr. Royall: Objection.

Q. (Continuing) —running a gasoline station? A. I certainly was not.

(3798) D. A. ZIMMERMAN was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

### Direct examination by Mr. Dias:

Q. Will you please state your full name and business address for the record, Mr. Zimmerman! A. D. A. Zimmerman. I work for Continental Battery Company, 1914 South Central Expressway.

Q. How long have you been with Continental? A. Since

1950.

Q. Have you been a salesman all that time? A. Yes, sir.

Q. Can you describe the territory that you cover for Continental? A. I have four routes, one each week. I make a complete revolution and start again. I am out all week.

Mr. Barton: I can't hear you.

The Witness: I run a route truck. I leave on Monday and return on Friday. I have four such routes.

#### By Mr. Dias:

- Q. Can you give us generally where you begin a route and where you end it, the east and west boundaries of it? Gives us some idea of where you cover. (3799) A. I make a loop into Texarkana and back, and a loop into Marshall and back, all on separate highways. You will find that is just two loops. One loop into Western Oklahoma and one into Eastern Oklahoma.
  - Q. What was the second one? A. Marshall.
- Q. Roughly how many customers do you call on in that territory? A. Approximately 300, I guess.

Q. How is that comprised? Do you have some gas stations, or all gas stations? A. The majority of my business is service stations.

Q. What else do you handle! A. Garages, small percent. Some auto supply houses.

Q. Do you have any idea of the number of Texaco service stations in your area? A. I sure don't.

Q. You can't estimate at all? Five, ten, fifteen, twenty?
A. In that whole territory?

Q. Yes. A. It would be a guess if I made a figure.

Mr. Royall: We object.

A. Two hundred maybe. I don't know whether that is right or not.

Mr. Royall: What did you say?

(3800) The Witness: A couple of hundred in the whole territory, I would say; just a guess. Several in each town I know, Texaco stations.

## By Mr. Dias:

- Q. A couple of hundred Texaco! A. That may be too high. It would be a guess, I told you.
  - Q. You only sell batteries? A. That is correct.
  - Q. Do you sell any to the Texaco stations? A. A few.
- Q. You sell a few batteries or a few stations? A. A few stations.
- Q. Can you tell us the number of those that you sell?

  A. What type of stations do you mean?
  - Q. Texaco stations. A. Company stations?
- Q. You tell us how many you sell to and then we will find out if they are leased or company. A. I think I sell about 19 all together.
- Q. Of that 19, do you know how many are leased stations? A. Not for sure. I just don't know for sure what company stations is. I have an opinion what I think it is.

(3801) Q. Of those 19, do they all buy your complete line? A. No.

Q. Do they buy for stock? A. I have only one does that; other are fill-ins.

Q. How many do you sell to that one that purchases for stock? A. I would say an average of four or five a month.

Q. And the other 18? Can you give us some idea of how many they buy per month? A. Not any more than that. Some vary. Some just fill-in and some will buy that many, too. Even their split accounts.

Q. Do I understand that all 19 buy four or five a month?

A. I believe that would be a little strong; all of them.

Q. How many batteries would you consider a stocking purchase? How many batteries would a station purchase for stock?

Mr. Royall: Objection. He already told that. Hearing Examiner Kolb: Overruled.

#### By Mr. Dias:

- Q. You may answer. A. For a stocking account?
- Q. Yes. A. Fifteen.
- Q. Is that purchase of 15 on one order? (3802) A. For a coverage, yes, sir. There is various types I am talking about. That is what it would take to make a complete coverage of batteries.

Q. By types do you mean sizes? A. Sizes and types.

Q. Have you in the last three years lost any Texaco accounts, or suffered a loss of business among them? A. I have lost some; yes, sir.

Q. Can you name those for us! A. Well, right offhand I don't believe I could just name them, no. I have lost some Texaco business; yes, sir.

Q. Did you sell to Mr. Sanford? A. Yes, sir.

Q. Did you lose business with him? A. Yes, sir.

Q. Were there any whose purchases decreased? A. Yes, sir.

(3803) Q. Month by month or whatever the period was? A. Yes, sir.

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

#### By Mr. Dias:

Q. Can you name those? A. I have one in mind. I think there is more but I have one in mind now.

Q. Do you feel free to tell us who he is? A. I don't feel free, but I would. Steve Rowland, Duncan, Oklahoma.

Q. What is the situation in regard to that account? A. Almost stock buying, and what is remained is in hiding.

Q. In hiding, you say? A. Yes.

Mr. Royall: Motion to strike the answer as not being responsive and being an opinion.

Hearing Examiner Kolb: The motion will be

enied.

## By Mr. Dias:

Q. When was the last time he purchased from you?

A. I believe 90 days ago. Three months back, I believe.

That's correct.

Q. Do you recall how many batteries he purchased from you at that time? A. One.

(3804) Q. Did he stock that on his shelf? A. No, sir.

Q. What did he do with it? A. In the back room.

Q. Prior to that time had he been buying more than one battery at a time? A. Yes, sir.

# D. A. Zimmerman, for Commission-Direct

Q. How long ago was that? A. It started tapering off maybe a year—maybe six months, I would say, back.

Q. Six months ago? A. Six months back.

Q. Before it started tapering off, can you give us some idea of the size of his orders? A. As many as six a trip, a month.

Q. Do you only call on him once a month? A. Yes, sir.

Q. How long had he been buying that many, six a month? Was that the average purchase? A. Yes.

Q. Over what period of time? A. Ever since he has

been with us.

Q. How long has that been? A. I don't know that for

sure: three or four years.

Q. Did he give you any reason for cutting down on his (3805) purchases?

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. He said that they wanted him to handle their TBA line.

#### By Mr. Dias:

Q. Who is "they"! A. I don't know for sure who he was talking about. I think when he was talking to me, there was pressure put on him, "that I'm going to have to handle the line that the agent handles."

Mr. Royall: Motion to strike. That is an impression that he got.

Hearing Examiner Kolb: He is stating a conversation that he had with the man.

Mr. Royall: I don't think so. Hearing Examiner Kolb: Overruled.

#### D. A. Zimmerman, for Commission-Direct

#### By Mr. Dias:

- Q. Who is the agent? A. I don't know the agent's name.
- (3806) Q. These 19 that you are now selling, how often do you call on each one of those? Is it once a week? Once a month? A. Once every four weeks.
- Q. Were there any among those that bought more batteries in the past than they are now buying? A. No, sir. In the past?
  - Q. Yes, in the past. A. Yes, sir. Excuse me.
  - Q. How long ago?
- A. I would say the last two years it become the worst.
- Q. Do you have any idea what those stations were purchasing per month at that time?
- A. They vary. I couldn't put my finger on it. I believe Steve Rowland's account of 6 to 10 would be the average.
- (3807) Q. Of those 19 are there any among them that buy less than four or five a month? A. Yes.
- Q. Do you have some idea of how many? How many stations first buy less than four or five a month? A. I would say half of them.
- Q. How many do they buy a month? A. One or two. Sometimes miss several trips before they buy any.

#### D. A. Zimmerman, for Commission-Cross

#### (3808).. Cross examination by Mr. Royall:

Q. In your territory there are other salesmen of other jobbers? A. Yes, sir.

Q. And of manufacturers? A. Yes, sir.

Q. About how many different wholesale and manufacturing concerns are selling batteries, either singly or with other equipment, and travel that territory? About 25 or 30? A. I don't know. I would say that is too many.

Q. What would be your best estimate? Would you

say 20? A. Ten or 12 would be my estimate.

Q. Does that include—that doesn't include any wagon jobbers? A. Yes, sir.

Q. Do you mean there are only 12 including the wagon iobbers! A. That would be my estimate.

Q. Let's run over some of them.

Who sells Delco in that area! A. I wouldn't know for sure who. I think there are several.

Q. There are several? Would you say three for Delco? Or four? A. Different localities I believe there are different (3809) distributors. There would be one in this territory and I believe one in another one.

Q. Aren't there two in some single territories? A. I really don't know where they get their supply. I just know

they buy Delco batteries?

Q. Do you know whether they are sold by one or two competitors? A. No, sir.

Q. Or three? A. No, sir.

Q. Southland! A. They have distributors, yes, sir.

Q. Do you know whether they have more than one A. Over all of mine? Yes, sir. One will be here, one will be there.

Q. You don't know whether they duplicate in any single place, do you! A. No, sir.

Q. Auto-Lite? A. They are in my territory.

# D. A. Zimmerman, for Commission-Cross

Q. Do they have several people selling that? A. I don't know.

Q. And Texan? A. They are in my territory.

Q. And Exide? (3810) A. Y., they are in my territory.

Q. And Willard! A. Very little.

Q. How many wagon jobbers are there in each particular location? Three or four? A. I don't have the least idea. There are some going here and yonder, but I don't pay any attention to them. I don't know.

Q. You don't know whether there would be a half dozen

or a dozen of those, do you? A. No, sir.

Q. So you have no way of estimating what the total would be for the jobbers and wagon jobbers, would you? A. No, sir, I don't.

Q. And the figure of 12, you are speaking principally of jobbers? A. My competitors. That is what I would

call them.

Q. When you say competitors you mean the jobbers?

A. Well, I don't know whether jobbers or distributors are my competitors.

Q. Do you consider the wagon jobber a competitor also?

A. Yes, sir. Any body who sells a different brand of

batteries than me is my competitor.

Q. And do, you still say that there are only about a dozen? A. That is a guess.

(3811) Q. But after thinking about it you think it may be a little more, do you? A. I wouldn't want to change it.

Q. The first time that Continental delivered dry batteries was May 1, 1956? Doesn't that state that on the price list? May be this will refresh your recollection. A. I am just trying to think.

#### D. A. Zimmerman, for Commission-Cross

Q. Is that right (a document was handed to the witness)? A. That is the first time they appeared on the price list, yes, sir.

Q. It says on the price list "available May first." A.

They were available sooner than that.

Q. It meant they were not available generally on February 20, did it? A. They weren't listed before that on the price list.

Q. They say here, on the February 20 list, "available

May 1st." A. I don't know about that.

Q. Don't you see it? A. According to the price list.

7

Q. And the price list is gotten out by the company, isn't it? A. Yes, sir.

Q. I dish't understand one thing you said, and I am merely seeking correction of it. Do you mean it takes 15 batteries (3812) to have a full stock? Is that what you meant? A. That is my opinion.

Q. I understand that. That is what you meant by 15 to cover the stock. It didn't mean that you had to sell him 15 at one time, did it? A. The initial order, yes.

Q. The initial order, yes. But after that if he had 15 after he purchased a particular order, he had what you in your opinion thought was about a full coverage? A. That's right.

# Cross examination by Mr. Barton:

Q. I take it Excel batteries are sold in the territory in which you operate? A. Yes.

Q. They are manufactured by the Green Manufactur-

ing Company! A. Yes, sir.

Q. I take it also that Southland is a very important competitor of yours in that territory? A. Competitor, I would say. I don't know how important.

# D. A. Zimmerman, for Commission—Cross

Q. There are a lot of Southland batteries sold in that territory? A. Yes, there are Southland batteries.

(3813) Q. And they are manufactured by a company located here, are they not? A. I believe, by Vitalic.

Q. And the Reliable battery is sold in that area, isn't it? A. Some, yes, sir.

Q. It is manufactured by a company located here, isn't it? A. Manufactured by a company. Its factory I don't believe is here. They have a warehouse here.

Q. In your area, you say you have four different routes? A. Yes, sir.

Q. And you travel one of those routes each week? A. That's right.

Q. And you leave here on Monday and get back on Friday? A. That's right.

Q. How many batteries do you put in your truck? A. Seasons will vary. The maximum I would say 250.

Q. Two hundred fifty. And you call on all 300 customers that you have every month? A. Yes, sir.

Q. How many batteries do you sell a month? A. That varies quite a bit.

Q. I understand it varies. What is the average number you sell them? It will vary with the season of the year, I take it. A. Yes, sir.

(3814) Q. What is the average that you will sell in a year? No, per month. You understand what I mean? A. Yes.

Q. Per month. A. The average I would say would be approximately 500 per month.

#### D. A. Zimmerman, for Commission-Redirect

#### Redirect examination by Mr. Dias:

Q. How many calls you made during the week? (3815)

A. That will vary because I call on prospects every week.

Q. How many steady customers do you call on per . week?

Mr. Barton: I object to this as not proper redirect.

Hearing Examiner Kolb: The objection will be overruled.

A. Steady customers? Average say 60 a week.

#### By Mr. Dias:

Q. Sixty a week. A. Approximately.

Q. You also call on prospective customers? A. Every day.

A. Not for sure. It depends how the business runs and what time I have.

Q. How many of those 250 batteries that you start out with do you usually come back with? Do you have any idea? A. From 30 to 75.

Q. In other words, you sell anywhere from 175 to 220 batteries per week, is that right?

Mr. Barton: Object.

Hearing Examiner Kolb: Overruled.

A. Yes, sir.

## George Snapka, for Commission-Direct

(3816) GEORGE SNAPKA was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

## Direct examination by Mr. Dias:

Q. Will you state your full name and business address for the record. A. I am George Shapka. I work for the Continental Battery Company, 1914 South Central Expressway.

Q. How long have you been with them? A. I have been

with them four years.

Q. In what capacity? A. Salesman.

Q. For the entire four years? A. The entire four years.

Q. What is your sales territory? A. I work the west Texas area, and south.

Q. What type customer do you call on! A. Service

stations, garages, and a few parts houses.

- Q. How many service stations do you sell a week? Approximately? (3817) A. Over my entire territory the entire customer calling I would say it would be about 130 customers for a month.
  - Q. Sir! A. For a month.

Q. One hundred thirty customers a month? A. Yes.

Q. How often do you make your rounds. A. I make my territory every 28 days, divided into four sections weekly.

- Q. There are 130 customers in your entire territory?.

  A. That is right. It includes everything. And I call on them once a month.
- Q. Are there any Texaco stations among the service stations in your area? A. Well, there are quite a few Texaco stations in the area.
- Q. Can you give us some idea of how many? A. I imagine there would be about 100 to 150. Somewhere in that neighborhood.

# George Snapka, for Commission-Direct

- Q. Are you able to sell to any of those Texaco stations?

  A. Yes, I sell a few of them.
  - Q. How many? A. I sell approximately 16.

Q. Do they purchase for stock? A. Most of them purchase for stock, yes, sir.

- Q. Can you tell us about how many purchase for stock? (3818) A. Individually, of course, each town varies according to the demands of the town, or of the customers, and each one buys according to his requirements or his sales for each month. Some batteries don't sell but maybe four batteries a month. Others don't sell but 8 or 10, and so on up. I sell them according to their requirements.
- Q. Have you called on all the Texaco stations in your trade area? A. Most of them at one time or another, yes.
  - Q. And out of them all you sell to 16? A. That's right.
- Q. Do those 16 advertise the batteries in and around the station? A. Well, the largest percentage of them do, yes. They don't advertise it. They do show the merchandise.
- Q. When was the last time you tried to sell to Texaco stations other than those 16? A. Just last week.
  - Q. Were you successful? A. No.
  - Q. What reason, if any, was given?

Mr. Royall: Objection.
Hearing Examiner Kolb: Objection overruled.

A. Well, the one particular one that I called on last week said that he—if he bought batteries from me he would have (3819) to put them in the back room, and that until he discussed it further with his agent he would see me later.

# George Snapka, for Commission-Cross

#### By Mr. Dias:

Q. Have you called on any others recently?

Mr. Royall: I move to strike that as being a conclusion and double hearsay.

Hearing Examiner Kolb: Motion to strike denied.

# By Mr. Dias:

Q. Have you called on several others recently? Other Texaco stations? A. Yes, sir.

Q. And have you attempted to sell them the battery?

A. That's right.

Q. Did they buy! A. No.

# (3821) Cross-examination by Mr. Royall:

Q. You have a lot of competitors there selling, too, don't you? A. Yes, I do.

Q. Everybody is trying to get as much as he can? A.

Why sure.

Q. Sometimes you get it all and sometimes you get none? A. That is true, too.

Q. And sometimes you get part? A. That's right.

Q. How many service stations are there, of all kinds,

in your area? A. Oh, Lord-

Q. A thousand? 1,500? A. I imagine it would be. You can't tell how many there would be unless you went out and specifically counted them.

Q. Maybe more than that. What territory is it? A. West Texas area.

Q. As a whole where does west Texas start? At Fort Worth? A. I work the area from Abilene to San Angelo to the New Mexico area.

#### George Snapka, for Commission-Cross, Redirect

(3822) Q. There might be many more than I said, might there not? A. There could be. I don't know.

Q. That is a country where they have a great many small service stations? A. That's right.

Q. Delco is one of the products they sell a lot of out of there, isn't it? Do you run into that a lot? A. I run

into very few Delcos.

Q. What is the leading brand besides yours in that territory? A. I imagine that I run more into the Republic line in that area. That is worked out of San Antonio which overlaps my territory.

Q. Do you have any others that are making a good deal of headway out there? A. Well, there are any number of brands. However, I don't know what the headway would be concerned.

Q. Some of them? A. The number of batteries is almost too numerous to mention, that you run into.

Q. The types of batteries? A. Car storage batteries.

- Q. Do you mean the names or brands are too numerous to mention?. A. I—a person could sit here for a half hour and mention them.
- Q. You see most of them all the time at one place or another? (3823) A. Yes, sir, I see a lot of them.

#### Redirect examination by Mr. Dias:

Q. Do you ever run into Firestone and Goodrich batteries out there? A. Oh, yes.

# Thomas Jame's Meggs, for Commission-Direct

(3824) THOMAS JAMES MEGGS was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

# Direct examination by Mr. Dias:

Q. Please state your full name and business address for the record. A. Thomas James Meggs, 2600 Main Street, Dallas, Texas.

Q. And the name of your company? A. The Meggs

Company.

Q. What is your present position? A. I am sales manager, and also vice president of the company.

Q. How long have you been sales manager? A. Twelve

years.

(3825) Q. What type business is your company in?

A. We are in the TBA—tires, batteries and accessories.

Q. What tires do you handle? A. We handle the

Q. And batteries? A. Delco.

Q. And among some of the most popular accessories, what is your filter! A. AC.

Q. Fan belts and hose? A. Gates.

Q. On both? A. Yes, on both of those.

Q. Spark plugs? A. AC.

Q. What sort of chemicals do you carry! A. We handle several brands, primarily DuPont. If you would like more names I can give them.

Q. Do you carry more brands? I mean other than DuPont? A. Yes. We have Johnson. Of course they don't carry a full line of chemicals. They just carry polishes, we will say.

#### Thomas James Meggs, for Commission-Direct.

Q. What all is included in chemicals? A. Of course there would be polishes, brake fluid, car (3826) washes, radiator chemicals like for cleaning out, stop-leak, antirust, and others.

Q. What type of customer do you sell to? A. Primarily we sell to the auto supply store and to the service station,

Q. Is that all? A. And to a few garages, a few car dealers, and a few that would be classified as fleets.

Q. Can you give us some idea of your sales territory?

A. Yes. At the present time we cover what we call North Texas. We would start with about Brownwood up to Wichita Falls, and go east to the Louisiana line, and not across the Red River. We do not cross the Red River.

Q. Among your customers do you have any Texaco stations? A. Yest sir.

Q. Can you give us some idea of the number? A. No, sir. I cannot.

Q. Can you approximate the number that are in your sales territory? A. No. I tried to arrive at a figure and that I couldn't do, either. I did get an estimate from the service station association that there were approximately—are you asking all service stations or just Texas Company?

Q. Just Texaco. A. There were approximately 100 Texaco stations in the (3827) City of Dallas, and in the metropolitan area about 175. In the rest of the territory it would be just a wild guess if I were to give you a number.

Q. Do you have any estimate at all of the number that you sell to? A. No sir. The reason for that, we do business under the man's name that is operating the station, rather than under the Texaco.

Q: Is there anyone in your company who would know the number of stations that you deal with? A. No. It would take some time. I could make a rough estimate. I would say in the neighborhood of 450.

# Leonard R. Akin, for Commission-Direct

Q. 450 what? Texaco? A. No; all service stations. Texaco stations would be just too wild a guess, I am afraid.

- Q. Of course you wouldn't be able to give us any idea of the annual purchases of Texaco? A. No, sir. I tried to do that but I couldn't.
  - Q. How many salesmen do you have? A. Eight.
- Q. Do they work out of the home office here? A. Yes. I have one man that lives in Aslington and I have one man that lives in Longview. The rest of course live here, work out of here.
- (3828) LEONARD R. AKIN was called as a witness for the Commission and, first having been duly sworn; was examined and testified as follows:

# Direct examination by Mr. Dias:

- Q. Please state your full name and business address, please? A. Leonard R. Akin, Beard and Stone Electric.
- Q. How long have you been with Beard & Stone! A. Approximately four years.
  - Q. In what capacity? A. Outside salesman.
  - Q. During that entire period? A. Yes, sir.
  - Q. What territory do you cover! A. City of Dallas.
- Q. Do you work on a salary or commission? A, Commission.
- Q. What type products do you handle! A. We handle Auto-Lite batteries, Auto-Lite spark plugs, (3829) Purolator filters, DuPont and National Carbon—Prestone chemicals, Shaeler Rislone, Gates belts and hose, Trico windshield wipers, washers, hose. There are numerous other accessory lines as well as automobile electrical outlets.
- Q. You do not handle tires?. A. No, sir, we do not handle tires.

#### Leonard R. Akin, for Commission-Direct

- Q. What type customers do you call upon? A. I call upon service stations, garages, fleets, industrial accounts. That is the host of them.
  - Q. Do you call on A. I call on some car dealers, too.
- Q. Do you call on any Texaco stations? A. Well, approximately four, sir, off and on; not regularly anymore.
- Q. How many Texaco stations are in your area? A. I would say there are in the area of Dallas that I cover probably 25; approximately 25.
- Q. And of the 25 you call on four? (3830) A. Not regularly. I don't even call on those four regularly.
- Q. Have you ever called on any of the other 251. A. At times.
- Q. Did you do any business with them? A. No, sir, not enough to warrant my continuing to call on them.
- Q. What about these four that you call on regularly?
  A. I do very little business with them.
- Q. Can you give me some idea of the products that you sell to them? A. Most of the products that I sell those accounts would be electrical, automotive electrical, stuff such as points, maybe carburetors or carburetor parts, and such as that.
- Q. Can you give us the names and addresses of those four? A. I can but I don't believe I care to, sir.
- (3831) Q: These four that you call on regularly, will you tell us whether they are leased stations or privately-owned? A. I think that I wouldn't know for sure. I think two of them are privately owned and two are leased.
- Q. How about the remaining 25 in town? Do you know anything about them? A. No, sir.

# Leonard R. Akin, for Commission-Cross

Q. These four, can you tell me what batteries they handle? A. Not offhand. I would say I don't call on them regularly anymore. It just doesn't pay me to call on them. My time is valuable.

# (3832) Cross-examination by Mr. Lorenzen:

Q. Could you tell us what part of Dallas you cover particularly? A. Actually, we have no exclusive territory, sir. However, the main part of Dallas that I cover would be the industrial river bottom, out Harry Hines, Lover's Lane, Preston Road, Mockingbird Lane, Northwest Highway, McKinney.

Q. I don't know much about geography. Is that generally the industrial section? A. Generally the northwest

area of Dallas would be most of my accounts.

Q. Is that the industrial part of the city? (3833) A. Not all of it. Part of it is the industrial area.

Q. Are there other salesmen who cover other portions

of Dallas! A. Yes, sir.

Q. How many? A. Well, I think in the City of Dallas there are—to cover every part of Dallas and the surrounding towns there would be approximately about seven salesmen.

Q. That is Dallas County? A. Yes.

Q. It would take about seven salesmen to find out just what your company sells in all parts of the county? A. Yes, sir.

Q. Your company is principally an automotive electric

equipment supply house, isn't it? A. Yes, sir.

Q. I think that is what has been known as "hard goods" or "hard parts"? A. No, sir. I would say a hard parts jobber would be one who sells pistons, rods and such as that. We are an automotive electrical house mainly. And

#### Leonard R. Akin, for Commission-Cross

we handle various accessories lines such as filters, batteries, spark plugs, windshield wipers.

- Q. The lines you testified about you handle on the side in addition? (3834) A. Not on the side. They are main lines. They are one of our main sources of revenue.
- Q. But you just testified a few moments ago that you are principally an automotive electric equipment supply house. That is your main line, your main business. The percent is what? About 78 percent of your business is in those lines, isn't it? A. Well, sir, I wouldn't be willing or able to say what percent of the Beard & Stone's business is in their electrical end of it.
- Q. You wouldn't know that at all? A. No, sir. I wouldn't know. It is a pretty large company. They have stores all over Texas. So I wouldn't be able to say at all what the percentage of their business is the automotive electrical. It is a large company that also handles various other lines such as small engines and lawnmower parts and accessories such as that.
- Q. And you testified that four Texaco stations to whom you sold electrical points and carburetor parts? A. Mainly, sir; yes, sir. Sell them equipment from time to time; small equipment.
- Q. But principally these electrical points and carburetor parts? A. Yes, sir. To those places; yes, sir.
- Q. That is a part of the automotive line of business rather (3835) than what you call accessory? A. Yes, sir, I would say that.
  - Q. And still it is those four to whom you sell that sort of equipment whose names you don't want to give us. Is that right? A. That is right. I wouldn't want to give any service station's name.

# Leonard R. Akin, for Commission-Redirect

Q. I don't think there is a question now.

Do you know what the total number of service stations is in the general territory which you cover? A. No, sir. I have no idea, sir. I only know that which I call on.

Q. And that is a very small percent of the overall total, is that right? A: I call on other stations. I just don't happen to call on Texaco and Conoco. sir.

Q. What are some of the other companies who have stations in there? A. Well, there is Humble, Magnolia, Gulf Phillips 66, stations of that type.

Q. And they are all potential customers of yours and you call on them all? (3836) A. Any account that uses automotive parts is a potential customer of me, sir.

Q. That goes for all of the stations? A. That goes for all of them.

#### (3837) Redirect examination by Mr. Dias:

- Q. You were asked about the other oil companies. Do you sell to their stations? A. Yes, sir. The stations that I call on, sir, I might say have mechanics and encourage the tune up business and such as that, and I sell those stations that type of merchandise.
  - Q. Do you sell those stations any batteries? A. No, sir.
- Q. Filters, fan belts? A. Very, very few. Emergency or pick-up.

#### Van J. Smith, for Commission-Direct

VAN J. SMITH was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

#### Direct examination by Mr. Dias:

Q. Please state your full name for the record. A. Van J. Smith.

Q. And your position with the Texas Company? A. Since the first of January I have been district manager, with headquarters at Fort Worth.

Q. You take care of the Dallas territory? A. That was the first of January that I went there.

(3838) Q. You were here? You were in Dallas prior to that time? A. Yes.

Q. What was your position in Dallas? A. Zone manager.

Q. For how long? A. A little over two years.

Q. As zone manager what were your duties here? A. My responsibility was to look after the sales and operations of the Texas Company in my zone, as outlined by company policies.

Q. Did that include TBA? A. Yes.

Q. Are you primarily concerned with TBA? A. No, sir.

Q. You weren't? A. No, sir.

Q. Who was? A. What do you mean by that?

Q. What do you mean by you weren't? Did you promote the TBA sales to Texas stations? In other words, did you go around to encourage them to buy Goodrich or Firestone? A. We operate this way: We encourage our dealers through our salesmen and through sales meetings and things of that sort to sell more TBA.

Q. Are you the man? Is that part of your duties? (3839) A. Generally the salesman makes the direct contact.

# W. E. Smith, for Commission-Direct

- Q. Then there is somebody the salesman. Are you the man above? A. Yes.
- Q. You are the man above the salesman at this point? A. Yes.
- Q. How many salesmen do you have or did you have?
  A. I had six.
- Q. Do they have some title other than "salesman," or is it merchandising in general? A. That's right.
  - Q. Do you have bulk plants here? A. Yes, we do.
    - Q. How many? A. One.
    - Q. Is that company-owned? A. Yes.
- Q. Where is that cated? A. 3900 Singleton Boulevard.
- Q. Does that one bulk plant serve the entire metropolitan Dallas area? A. Yes, sir.
- Q. Are there salesmen attached to the bulk plant? A. They office there.
  - Q. All the salesmen office there? (3840) A. Yes.
  - Q. Where do you office? A. At the bulk plant.
- Q. Was there anyone directly in charge of the bulk plant? A. Yes, sir. We have a terminal superintendent who is directly in charge of the bulk plant.
- Q. Was he directly in charge of the salesmen or were you? A. No, I was in charge of the salesmen.
- W. E. SMITH was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

# (3848) Direct examination by Mr. Dias:

Q Will you state your full name and business address for the record? A. W. E. Smith, Beard and Stone Electric Company.

## W. E. Smith, for Commission-Direct

- Q. How long have you been employed by Beard and Stone? A. Fifteen years.
  - Q. And in what capacity? A. City sales.

Q. During the entire 15 years? A. Yes, sir.

Q. What territory do you cover? A. The City of Dallas, Fort Worth, Arlington and Grand Prairie.

Q. Do you sell the entire Beard and Stone line? A.

Yes, sir.

- Q. What type customers do you solicit Mr. Smith? (3849) A. Garages, service stations, jobbers, and other jobbers.
- Q. Do you solicit the business of any Texaco stations?
  A. Yes, sir.
- Q. Do you have any idea how many there are in your territory! A. Well, no, not exactly. I don't call on all of them because we have card-in accounts. I mean by that we have designated accounts that we call on.

Q. In other words, you have fixed customers that you call on? A. That's right. We don't work in a certain

area, in other words.

Q. Do you know from those cards how many Texaco stations you have? A. I have four that I call on regularly. Approximately four.

Q. Would you care to name those four? A. Jack

Wilkie Service Station is one-

Mr. Lorenzen: Could you tell us where? The Witness: 9507 Garland Road.

#### By Mr. Dias:

Q. And the next one? A. Howard Rush Service Station, Greeneville and Ross; Russell Tableman.

Q. And the address! (3850) A. Lewis and Skilman. That is all I can recall at the moment.

#### W. E. Smith, for Commission Direct :

Q. I thought there were four. A. I said approximately four. That is all I can recall at the moment.

Q. How about Safety Services? A. Oh, yes. I forgot about them. Their main office is at Gaston and Haskell.

- Q. Of these four, do you sell anything to Wilkie! A. Yes, sir. I sell him mostly repair parts. He has a mechanic.
  - Q. Have you ever sold him any batteries? A. No, sir.

Q. Filters, fan belts? A. No fan belts.

'Q. Filters? A. Once in a while.

- Q. And your brand of filters is what? A. Purolator.
- Q. Radiator hose or plugs? A. A few hose. No plugs.

Q. You carry Gates hose! A. He handles-

- Q. Your company? A. Oh, yes, we handle Gates hose. (3851) Q. Do you know whether this operator is a leased station? A. I understand it is a leased station.
  - Q. Does he carry TBA products? A. Yes, sir.
- Q. What brand, do you know? What brand tires? A. Firestone.
  - Q. Batteries! A. Firestone.
- Q. How long have you been calling on Wilkie? A. Since about 1943.
- Q. What do you sell to Howard Rush? A. Practically nothing now.
- Q. Did you at one time sell him anything? A. Yes, sir. I used to sell him Auto-Lite batteries, Gates hose, Gates fan belts. Most everything we had.

Q. How long ago was that? A. Up until about three years ago, I would say.

- Q. Was any reason given for discontinuance of your line? A. Yes. He told me that they were going to have to handle Goodrich products.
  - Q. And is that what he is carrying now? A. Yes, sir.
  - Q. Tires and batteries? A. Yes, sir.
  - Q. Accessories? (3852) A. Yes, sir,

#### W. E. Smith, for Commission-Direct.

Q. Do you know whether or not he owns the station?

A. It is my understanding that he does.

Q. That he owns it? A. Do you mean whether it is a leased station?

Q. Yes. Is it leased from Texaco or does he own the property! A. Frankly, I do not know.

Q. How long have you been selling to that account?

A. I have known Howard and called on him for the last ten years.

Q. Tableman? A. I have only been calling on Mr. Tableman a short time.

Q. About how long? A. I would say five or six months. Just since he has taken over this location. He bought it out from another source.

Q. Do you mean he bought the property? A. No, sir.

Q. Just bought the lease? A. Yes, sir.

Q. Took over the station. What did you sell to him, if anything? A. Very minor items and some mechanical parts.

Q. And in the minor parts— A. He has a mechanic

also.

(3853) Q. Among the minor items are they repair parts? A. Yes, sir. Mostly repair parts.

Q. Does he handle TBA products? A. Yes, sir.

Q. Do you know what brand? A. Firestone.

Q. Tires and batteries? A. Yes, sir.

Q. And accessories? A. Yes, sir.

Q. You say he opened about five or six months ago. Did you call on him when he first opened? A. I called on the man who was there before him, Parks Hunter, who leased the station at that time?

Q. Had you ever sold to Parks Hunter? A. Yes, sir, a few items.

Q. Such as? A. Mostly anti-freeze.

#### W. B. Smith, for Commission-Direct

- Q. What brand? A. We handle Prestone.
- Q. Is that all the prior owner bought? A. Of any consequence, yes, sir.
- Q. How long had he been there, as far as you know? A. He was there I think three or four years. I don't recall the exact length of time he had the station.
- (3854) Q. Had you called on him regularly up until the time he left the station? A. Yes, sir.
- Q. When Tableman opened up—that is, took over—how soon after he opened up did you call on him, do you recall?

  A. The following week.
- Q. The following week? A. Yes, sir. Almost immediately as soon as he took it over. I went by on my regular routine calls.
- Q. How long—how often do you make your rounds? A. Once a week. Some customers of course, once every two weeks.
- Q. And on Safety Service? Can you give me some information about that? Do you sell to that account? A. A few minor items, yes, sir. I sell them a little Gates hose and belts.
- Q. Isn't that a chain here? A. Yes, sir. They have I think 7 or 8 stations.
- Q. Do you sell to each of the stations or just to this one account? A. Just to the warehouse.
- Q. Is this address Gaston and Haskell the warehouse of Safety services? A. Yes, sir.
- Q. What sort of a setup is that? Is that a leased outfit (3855) or do they own their own property, Safety Services? A. I don't know, sir. I just don't know.
- Q. Does this warehouse purchase for all stations? A. Yes, sir.
- Q. At this address is there also a service station? A. Yes, sir., That's right.

#### W. E. Smith, for Commission-Direct

- Q. A service station and a warehouse? A. That's right. The warehouse is off to the side. Away from the station.
- Q. You mentioned Gates hose. Is there anything else you sell to them? A. A few Trico blades.

Q. How about batteries? A. No, sir.

Q. Your company does not handle tires, does it? A. No, sir.

Q. How about tubes? A. No, sir.

Q. Do you sell them any filters! A. No, sir.

(3856) Q. Do yoursell them any repair parts? A. I did at one time. They had a mechanic at their station on East Grand and I sold them a few repair parts there. But primarily they don't use any mechanics.

Q. It is just a gas station? A. Most all of their sta-

tions are just gas stations.

Q. Do they handle TBA? A. Yes, sir.

Q. Do you know what brand? A. Well, I believe it is Goodyear. I am not sure.

Q. And is that tires— A. They handle Goodyear tires.

- Q. Do you know about batteries? A. They handle Continental batteries. I believe that is the brand. I am not sure.
- Q. How long have you been calling on them? A. I would say 12 or 13 years.
- Q. Are there any others that you know of that you have called on in your territory? A. No, sir. Those are the main Texaco stations.

Q. Have you always been in this territory, Mr. Smith?
A. Yes, sir.

Q. How about Conoco stations? Are there any in your sales territory? A. I have one in Oak Cliff.

(3857) Q. And his name? A. J. H. Caldwell Service Station.

#### W. E. Smith, for Commission-Direct

Q. Is he the only Conoco station in your territory?

A. He is the only one I call on, sir. There are others in the whole city of course which I cover.

Q. But they are not designated accounts? A. But they

are not designated accounts.

- Q. How does a station get to be a designated account? Does somebody in your own office designate it? A. If we go out and find a new customer we turn in a card on it. That card is set up and we are given that account to call on. Each territory is what we call a carded account. We get credit from all the business that comes in from those carded accounts.
- Q. Do you ever attempt to sell to other accounts? In other words, assume you have a hundred accounts in your territory. Do you ever try to expand that and sell to others? A. Oh, yes. We try to find new accounts all the time. And if you find a new account, if some other salesman doesn't have it designated as his account, you can pick that account up and add it to your territory.

Q. Returning to the Texaco stations, have you ever attempted to sell to other Texaco stations in your area?

A. No, sir.

Q. How about Conoco!

(3858) Other than this one have you ever attempted to open an account in other Conoco stations? A. I just haven't found any new Conoco stations that weren't already designated by some other salesman.

Q. This Caldwell, what does he purchase from you? A.

I sold him a little anti-freeze last winter.

Q. Anything else! A. No, sir.

Q. Is he a leased station! A. I understand he owns the property.

Q. Does he handle TBA? A. Yes.

Q. Tires? A. Yes.

#### W. E. Smith, for Commission-Cross

Q. What brand of tires? A. I don't know, sir, to tell you the truth, because we are not interested in tires.

Q. How about batteries? A. I believe it is Reliable. I am not sure.

Q. Turning to Wilkie's Texaco Station, have you ever tried to sell him batteries! A. Several times.

Q. What reason, if any, was given for not buying his battery? A. That he had to handle Firestone.

(3859) Q. How about Howard Rush? Have you ever tried to sell him batteries? A. At one time I sold him batteries, yes, sir.

Q. Have you tried again recently? A. Yes, sir, but he

said he had to handle Goodrich.

Q. And Russell Tableman. Since he opened have you tried to sell him batteries? A. Yes, sir.

Q. What reason, if any, was given for not selling him?

A. That he had to handle Firestone.

#### Cross-examination by Mr. Lorenzen:

Q. You testified that this Texas operator. H. D. Rush, is one whom you have known pretty well for ten years? A. Correct.

Q. You call him by his first name? You call him "Howard"? A. Yes, sir.

Q. And you used to sell him quite a few items of TBA? A. I sold him Auto-Lite batteries, Gates fan belts, Gates hose.

Q. And that stopped about February 1954, didn't it? Just about that time? A. I would say that was approxi-

mately right.

(3860) Q. Don't you know that in that very month his own brother got to be in charge of the Goodrich supply point here in Dallas? A. That was my understanding; yes, sir.

#### W. E. Smith, for Commission—Cross

Q. And after February 1954 he bought from his own brother instead of buying from you? Isn't that right? A. He buys stuff through his own brother now, yes, sir.

Q. That is what he does now? A. Yes, sir.

Q. Let's go to this chap Tableman. Don't you know that he is a former employee of the Firestone Company? A. No, sir, I didn't know that.

Q. You didn't know that? A. No, sir.

- Q. Didn't know that he came from Firestone to the Texas Company? A. No, sir, I didn't know that.
- Q. There was never any discussion about that with you?
- Q. One of your fellow salesmen is Mr. Akin, is he! A. Yes, sir.
- Q. Do you likewise call on those service stations that have mechanics and encourage the tune-up business and things like that? A. Yes, sir.

(3861) Q. That is the type of stations you call on? A. Yes, sir.

Q. That is because a very substantial part of the line of Beard & Stone has to do with mechanical parts—ignition parts, carburetor parts and things like that? A. No, not entirely. A good percentage of our business is mechanical parts.

Q. A good percentage of it is mechanical parts? A. Yes, but we have all this other merchandise to sell, also.

Q. But other things being equal you like to call on somebody where you also have a chance to sell your mechanical parts and things like that! A. Well, naturally, if you are going to call on a service station you call on a prospect to try to sell him something. And if you know that in calling on this service station that you can't sell him other items then you would pick the accounts that have mechanics where you would naturally have a chance for a sale.

#### W. E. Smith, for Commission—Cross

Q. Whatever the reason is, that is the kind you call on. Right? A. Right.

Q. You testified that you didn't sell the SS Stations any batteries, didn't you? A. No, sir. I don't sell them any batteries. Safety (3862) Service Stations!

Q. Yes. And you say the line they handle is Continen-

tal? A. I believe that is correct.

Q. There are quite a few accounts that you call on to whom you don't always make sales, aren't there? A. Well, yes, sir, sure.

Q. That is part of the game of being a salesman, isn't

it? A. Yes.

Q. Sometimes you get the sales and sometimes you don't? A. That is right.

Q. And the people on whom you call give you all kinds of reasons for not buying from you, don't they? A. Oh, yes, we have quite a few.

Q. You get sort of the same excuse as a police judge does, don't you? When you try to explain to him why you

speed. A. Just about.

Q. You sell Mr. Wilkie, I think you said, radiator hose? A. Yes, sir, occasionally. Not on every call, of course. When he needs them.

Q. The Gates- A. I don't sell him all of his hose, if

that is what you mean.

Q. Gates fan belts and Gates radiator hose are a very popular item among service stations, aren't they? A. Yes, sir.

(3863) Q. There are a great many Texaco stations that handle those Gates fan belts and Gates radiator hose? A. No, most of them handle Firestone and Goodrich.

Q. Let me ask you, do you ever look at the Gasoline Retailer? Do you know what that is? A. I have had occa-

sion to read it, yes.

#### W. E. Smith, for Commission-Cross

(3864) Q. E. L. Stewart, at Beacon and Lindley? A. At one time he was my account. I no longer call on him.

(3865) Q. And Jack Wertheimer, at 3613 Live Oak? A. I call on Jack.

#### · Cross examination by Mr. Barton:

- Q. You say you call on Howard Rush regularly? A. I did.
  - Q. Do you now? A. Yes, sir.

Q. How often? A. About every two weeks.

- Q. You know of course that he works for his brother who is the Dallas station supply and Goodrich distributor here? A. Yes.
- Q. And he has worked for him for sometime, ever since— A. He still has the station.
- Q. He has the station but he also works in the tire distributing business, doesn't he? A. He spends most of his time at the station.
- Q. You know he spends some time at the tire company?
- Q. What kind of accessories does Caldwell's Service Station handle? (3866) A. All types of TBA items. Of course he does a lot of mechanical work, too.

Q. But you don't sell him any of it? A. I don't sell him any TBA items, no, sir.

Q. What reason did Safety Services give you for not buying batteries from you, if any? A. They have handled the line of batteries that they have for years and years and years, and they don't give me any particular reason for staying with it, other than they have just handled it for years and years; they are satisfied, they don't want to change.

#### W. E. Smith, for Commission-Redirect

## Redirect examination by Mr. Dias:

Q. You mentioned that you used to sell to E. L. Stewart, Mr. Smith. How long ago was that? A. That was quite sometime ago. I would imagine six or seven years ago.

Q. Did he buy any of your batteries, filters and so on? Did you sell to him at that time? A. I sold to him at that

time.

- Q. And what did he purchase? A. Gates fan belts and radiator hose.
  - Q. Batteries; A. No batteries; no, sir.

(3867) Q. When did he stop purchasing from you? A. I quit calling on him.

Q. You quit calling on him? A. Yes. And turned it

over to one of the other boys.

- Q. And Wertheimer? Do you call on him now? Yes, sir.
- Q. What do you sell him? A. I sell him a little Shaeler Rislone, some fan belts and a few radiator hose, and he is just about two blocks from us. He picks up quite a few items at the store.
- Q. Such as? A. I don't know all of the items he picks up. All I know is the orders that I write for him.

Q. Have you ever attempted to sell him any batteries?

A. No, sir. He has a hookup on batteries.

- Q. With whom? A. Through this tire company. I have forgotten what line of tires he handles now. Oh, it is U.S. He is a U.S. Tire distributor.
  - Q. Does he own his own station! A: Yes, sir.

Mr. Dias: That is all.

#### W. E. Smith, for Commission—Recross

#### Recross examination by Mr. Lorenzen:

- Q. Mr. Stewart has told you that he has this hookup with (3868) the U.S. Tire Company? A. No. This is Wertheimer.
- Q. And likes to buy his batteries through them? A. Well, he buys his batteries through U. S., yes, sir. I think it is mostly on account of price.

Q. Mostly on account of price? A. Yes.

Q. There is some advantage in quantity discounts and matters of that kind, isn't there, in buying your entire TBA line from one source?

Mr. Dias: I object, your Honor; beyond the scope of the direct.

Hearing Examiner Kolb: The objection will be overruled.

A. Of course the fact that Jack is a U. S. distributor, I imagine he gets a better price.

#### By Mr. Lorencen:

Q. You don't know that? A. No, sir.

Q. You know in general if you buy— A. It usually works that way; yes, sir. If you are a distributor you get—

Q. And if you buy your entire line from one source, you get some quantity discounts, too! A. That isn't always true; no, sir.

(3869) Q. But there are situations where that is true? A. Yes.

- Q. And you have run into that in connection with selling to service stations? A. Well, not so much on service stations; no, sir.
- Q. But you have to some extent, haven't you been advised of that by operators? A. Oh, yes.
  - Q. You have? A. Yes.
  - Q. Of service stations? A. Yes.

# W. E. Smith, for Commission—Redirect John Morgan Hussong, for Commission—Direct

#### Redirect examination by Mr. Dias:

Q. Can you name the service stations that told you that? A. No, sir, not offhand, that I can recall.

(3870) JOHN MORGAN HUSSONG was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

# Direct examination by Mr. Dias:

- Q. Please state your full name and business address for the record? A. John Morgan Hussong. My business address?
- Q. Yes. A. 3909 Live Oak, Beard and Stone Electric Company.
- Q. How long have you been with Beard & Stone? A. About 14 years.
- Q. In what capacity? A. Well, I came up from delivery boy and I have been on the sales force since 1946.
  - Q. Sales force since 1946? A. Yes.
- Q. Will you tell us what territory you cover? A. We have no set territory, other than in the City of Dallas. Our men work all over the City of Dallas wherever they might pick up customers.
- Q. Do you too have designated accounts? A. Yes, sir. If we pick up an account that no one else is calling on, our company will designate it to us by (3871) request.
- Q. Do you sell the full Beard & Stone line? A. Yes, sir. I attempt to.
- Q. What type customer do you have? A: Well, sir, I have practically all types. Service stations, garages, dealers, fleets, industrial accounts.

#### John Morgan Hussong, for Commission-Direct

- Q. Among the service stations do you sell to any Texaco stations? A. Yes, sir, a few.
- Q. Can you tell us how many? A. Approximately four or five.
- Q. Are there any others that you call on? Are these the four or five you sell? Are there any others that you call on in addition to those four or five? A. Well, I have attempted to call on them but I have just about weeded them out that I didn't get any business out of.
- Q. Which are the specific stations that you call on, Mr. Hussong? Will you name them? (3872) A. Ray Tosch Service Station.
  - Q. Address? A. I believe it is 8315 Preston Road.
  - Q. And your next Texaco station? A. C. K. Stowers.
- Q. And their location? A. Midway Road and Northwest Highway.
- Q. And the next one? A. I believe that is about all I am calling on at the present time in the way of Texaco stations.
- Q. What do you sell to Tosch? A. I sell him mostly ignition, some shop supplies, and carburetion.
- Q. Have you ever attempted to sell him batteries? A. Yes, sir.
- Q. Has he ever bought any from you? A. No, sir, not to my knowledge.
- Q. What reason, if any, was given for not buying batteries?

Mr. Lorenzen: Could we have a time on that?

#### By Mr. Dias:

Q. Go ahead and we will try to get the time. A. He has probably a better deal. He buys them on jobber prices which we don't sell to service stations on jobber price.

# John Morgan Hussong, for Commission-Direct

Q. What brand battery does he carry? (3873) A. I am not sure but I believe it is Southland or Continental. I can't say for sure.

Q. And C. K. Stowers, what do you sell to him? A. I sell him a few chemicals, equipment occasionally, friction

tape, fan belts occasionally.

Q. Have you ever attempted to sell him batteries?

A. Yes, sir. I have sold him a few batteries.

Q. Do you know whether or not he owns his own sta-

tion? A. Yes, sir, I believe he does.

Q. Didn't you say that you called on four? Are there two more? A. Yes, sir. I have called on one, just about quit calling on him, Carroll on the East Side.

Q. Do you have the name? A. The new attendant?

No, sir, I don't know the name.

Q. You say he is a new attendant? When did he take over? A. Approximately three months ago.

Q. Do you recall the name of the former operator?

A. Yes, sir.

Q. What is his name? A. Mullins.

Q. Did you sell to Mullins? A. Yes, sir.

Q. Tell us what you sold to him? A. I sold him fan belts, some ignition stuff.

(3874) Q. Batteries! A. No, sir, not batteries.

Q. Any filters? A. Yes, sir.

Q. I take it that is a leased station? A. Yes, sir.

Q. What brand tires did Mullins carry, do you recall?

A. I believe he just picked up Firestone maybe as he sold them. I don't think he stocked any.

Q. How about batteries? Did he stock batteries? A.

Yes, sir.

Q. Do you recall the brand of batteries he stocked?

A. I believe it was Continental. I am not sure on that.

He stocked a few of them.

# John Morgan Hussong, for Commission-Direct

- Q. Is that the only brand he carried? A. No. sir. I believe he handled some Delco.
  - Q. Any others? A. That is all that I recall.
- Q. When this new operator took over about three months ago did you call on him? A. Yes, I called on him a few times.
  - Q. How soon after he opened? A. Within a week.
- Q: Does he carry any tires or batteries, the new operator? A. Very few, if any. His stock is small.
- (3875) Q. Is there another Texaco station that you called on? A. Well, I have called on P. F. "Red" Reynolds.
- Q. Are you still calling on him? A. No, sir. He moved out of my reach and I quit calling on him.
- Q. How long ago is that? A. Approximately a couple of years, I guess. A year and a half, something like that.
  - Q. Did he purchase anything from you? A. Yes, sir.
- Q. What did he buy? A. Some Gates, some ignition, carburction.
- Q. Did he purchase any batteries? A. No, sir, not from me.
  - Q. Did he carry TBA? A. Yes, sir.
- Q. What brand did he carry? A. I believe he handled Goodrich tires and batteries. I think most of his TBA were Goodrich.
  - Q. Was his a leased station? A. Yes, sir.
- Q. Are there any others that you call on? A. W. E. Drumgold.
  - Q. Are you still calling on him? A. No, sir.
- (3876) Q. When did you discontinue? A. About two years ago.
  - Q. Were you able to sell him anything? A. Yes, sir.
- Q. What did you sell him? A. We sold him a few ignition stuff, chemicals, DuPont chemicals.

#### John Morgan Hussong, for Commission-Cross

- Q. Anything else! A. Some soap.
- Q. Is he still in business? A. Yes; not at this location.
- Q. Is he out of your territory again? A. Yes, sir.
- Q. Did he carry TBA? A. Yes, sir.
- Q. Do you recall the brand? A. No, sir; I don't,
- Q. Did he own his own station? A. No, sir.
- Q. Do you recall the brand battery he carried?

Mr. Barton: I object.

Hearing Examiner Kolb: Objection overruled.

A. No, sir.

#### By Mr. Dias:

- Q. Are there any others? (3877) A. I believe that is all.
- Q. Do any of these stations that buy your Gates hose and belts and filters advertise your products in their station? A. I don't know whether they advertise them or not. They display them.

#### Cross-examination by Mr. Lorenzen:

- Q. There is one station I think that you weren't asked about, whether it was leased or owned, and that is Mr. Tosch. He is a leased station, isn't he? A. Yes, sir.
- Q. He is the one who carries the Southland batteries?

  A. Yes, sir.
- Q. Mr. Reynolds operated a leased station and you testified that he bought Gates fan belts, among other things, from you, and some batteries, I think? (3878) A. No. sir, no batteries.
  - Q. You said Gates fan belts! A. Yes.
  - Q. And hose? A. Yes, sir.

## Elmer W. Johnson, for Commission-Direct

Q. And then you said that he moved. That is why you don't call on him any more? A. Yes, sir.

Q. He moved to a bigger and better Texaco station, didn't he, in another location? A. Probably did. I never have been in his place, in his new place.

Q. Then if I showed you a picture you wouldn't recognize it? A. I don't believe I would.

- Q. Have you made any effort to sell him Gates fan belts at his new location? A. No, sir, I have not visited him in his new station.
- Q. Do you know whether some other salesman of your company now sells him these Gates fan belts? A. Not that I know of.
- Q. So if he got Gates now he buys them from some other source, some competitor of yours? A. I don't know.
- Q. There are other jobbers, many of them that handle this (3879) Gates line in Dallas? A. Oh, yes; yes, sir.
- (3880) ELMER W. JOHNSON was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

## Direct examination by Mr. Dias:

- Q. Will you state your full name and business address for the record? A. Elmer W. Johnson, Johnson Automotive, Incorporated, 611 East Jefferson.
- Q. How long have you been in the TBA or related business, Mr. Johnson? A. About 25 years.
- Q. How long have you been in business as the Johnson Automotive, Inc.! A. Two and a half years.
- Q. What is your position with Johnson Automotive, Mr. Johnson? A. I am President of the company and general manager.

## Elmer W. Johnson, for Commission-Direct

Q. What did you do prior to the time you were with Johnson Automotive? A. I was in Fort Worth, with another company in Fort Worth.

Q. What type company? What did it deal in? A. Auto-

mobile\_supplies.

Q. How long had you been with them? A. I believe 23

years with that company.

(3881) Q. Will you describe the business of the Johnson Automotive Company? What type business it is, and what do they sell? A. You mean items that we sell?

Q. Yes. It is automotive supplies. A. Yes.

Q. Do you handle tires! A. No tires.

- Q. How about batteries? A. We handle a battery, but I don't sell many batteries?
- Q. What battery? A. We handle a battery made in Cleburn, Texas.
  - Q. Do you handle filters? A. We handle Fram filters.
  - Q. Belts and hose, what type? A. Thermoid.

Q. Spark plugs? A. AC.

Q. Do you handle chemicals A. Yes.

- Q. What brand? A. I don't believe I could name all of them.
  - Q. Name a few. A. DuPont for one.

Q. And you handle others? A. Yes.

(3882) Q. What about anti-freeze? Do you carry anti-freeze? A. We do.

Q. What type? A. DuPont Zerex.

Q. What is your sales territory! A. You are talking about the TBA sales area, I guess

Q. Yes. Apparently there is a difference. What type customers do you sell to? A. We do a split—part of my business is redistribution.

Q. Of what? All these items you have mentioned? A. Yes.

#### Elmer W. Johnson, for Commission-Direct

- Q. How much of your business is redistribution? A. About half. The area in the other half, regular wholesale, would be, I guess, 15 miles is the furtherest out that we go.
- Q. Fifteen mile radius of your place of business, is that correct? A. Yes.
- Q. Half is redistribution and the other half is whole-sale? A. Yes.
- Q. And in those sales at wholesale does that include sales to service stations? A. Yes, sir.
- Q. Are there any Texaco service stations in your sales area? (3883) A. Yes, sir.
- Q. Can you tell us approximately how many? A. It would just be a guess.

Q. Do you employ salesmen? A. Five.

- Q. Have they ever reported the number of Texas Company stations in their territories? A. No. We don't keep a separate record of Texaco.
- Q. How are your salesmen compensated? Salary or commission? A. Commission.
  - Q. Solely? A. Yes.
  - Q. Do you sell to any Texaco stations! A. Yes.
- Q. Can you tell me how many? A. It wouldn't be accurate because I don't keep an accurate record of them. But I would say 25 all told.
- (3884) Q. Can you name any? A. Yes, I could name some of them. However, I don't know the address. Cornett Service Station would be one. I don't know what street he is on.
- Q. And the next one? A. It is O. C. Mann. He is on Clarendon. I don't know what address.
- Q. Can you name some more? A. There is one in Grand Prairie, Vic Robertson, I believe it is.
- Q. Any others? A. I don't believe I could name any more from memory, no.

#### Elmer W. Johnson, for Commission-Cross

- Q. Can you tell me what you sell to Cornett? A. Mostly tune up items and garages, like shock absorbers, ignition, universal joints and stuff like that.
  - Q. Have you ever sold them any batteries? A. No.
- Q. Have you ever tried? A. I couldn't answer that question. I don't know whether, (3885) my salesmen tried or not.
  - Q. How about— A. They are supposed to have.
- Q. Is that true with each of these stations? You don't have any first-hand information about whether or not you sell them, or attempt to sell them or anything else? Is that correct? A. Are you talking about batteries?
- Q. Yes. A. I don't think that they try to sell them, the batteries that I have, too much, because I really just keep these batteries—I use them in my own equipment a whole lot. Of course, we do sell them over the counter, but we don't really try to sell batteries. We have got them.

#### Cross examination by Mr. Lorenzen:

- Q. I just want you to define "redistribution" for me. You said half the business was redistribution. A. Yes.
- Q. That means you sell it to wagon jobbers and they in turn sell to somebody else! A. Not wagon jobbers. Other jobbers throughout the territory.
  - Q. Other jobbers (3886) A. Yes.
- Q. You don't know who their customers are? A. No. I wouldn't have any idea.

LEE BARTON was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

## Direct examination by Mr. Dias:

- Q. Will you state your full name and business address? A. Lee Barton, Johnson Automotive, Incorporated, 611 East Jefferson, Dallas.
- Q. How long have you been with Johnson Automotive?

  A. One year.
- Q. Have you been in the TBA business prior to the time of your employment with Johnson? A. I was in the service station business.
  - Q. Operating or supplying? A. Operating.
- (3887) Q. What is your sales territory with the Johnson Automotive? A. North Oak Cliff. I make a few calls in Irving and Grand Prairie, at the dealer level, and I make some out of town calls at the jobber level, the redistribution level.
- Q. How many service stations in all do you call on? Do you have any idea? A. Roughly I would say 50.
  - Q: Do you sell to any Texaco stations? A. Yes, sir.
- Q. Can you name them? A. Out of Grand Prairie I sell to Vic Robertson, I sell a few items to the Texaco service station out on South West Third Street there, which is—it is a new operator out there and I am trying to think of his name.

Mr. Dias: Can you help him?

The Witness: It is a man by the name of Fox. I don't know who his partner is. It is Fox and Stiles.

#### By Mr. Dias:

Q. Are there any others? A. Yes, sir. I sell to Paul Vogel on North Sylvan. 1732 North Sylvan.

I sell to W. R. Cornett, on the corner of Tyler and

Davis.

Q. Any others? A. There is one that I did do business with, I haven't done (3888) any business with since the operators changed over there. I believe it is 100 North Industrial. Emory Johnson did have that. I did some business with Mr. Johnson. I haven't done any business with the new operator. He has been in there approximately a month.

Q. Any others? A. And Flippen, 1400 block on North

Zangs.

Q. Any others? A. That is all I recall offhand.

Q. Are there others in your territory? A. Yes, sir.

Q. As to Vic Robertson, what do you sell him? A. I sell him a few chemicals, some oil filters, some of his wash

and lube rack supplies.

- Q. Do you attempt to sell him batteries? A. No, sir. I am ashamed to admit that in front of my boss. He said I was supposed to, but I don't put out as much effort on batteries as I should.
- Q. Is that going to be true of all these stations? A. I work on a commission, and I work harder on the things that are easier to sell. The boss knows that.

Q. Is that true of all the stations! A. No, sir. I try to work hard on all the stations.

Q. Have you run into any that you can't sell? A. Yes,

(3889) Q. What kind are they? A. I don't know that you can brand them. There are personalities that enter into the sales picture that some people that I have to admit I can't sell. Maybe I get discouraged and rile too easily.

But any station that is in my territory I work on them until I am convinced in my own mind that either I can or . I can't sell him, before I drop him off the list.

Q. How many Texaco stations are in your territory? A. To recall a few of them—it is hard to single them out—there is a station at the corner of Fort Worth Avenue and Hampton Roads, which is a Texaco-operated station now. I used to sell them something when they had a dealer in there. They are a company-operated station now, and we are not getting—once in awhile we will get an emergency item of some kind out of them, but most of the stuff—it is a Texas Company salary operated station, and naturally they buy emergency items from us occasionally.

And there is J. J. Lieto, on Fort Worth Avenue.

Q. What about that one? A. That is a personal proposition. I don't like Mr. Lieto and he doesn't like me.

- Q. Any others? A. There are two more in Grand Prairie. I don't recall the (3890) name of the operators right now that I have called on in times gone by, and haven't been able to sell them. I have discontinued calling on them.
- Q. You say you have been able to sell? A. I haven't been able to sell. Those that I haven't been able to sell after what I considered the necessary effort, and when I am not able to sell them I discontinued calling on them. There are two in Grand Prairie that way.

Q. Is that Vic Robertson! A. No, I still call on Vic.

Q. Do you attribute the failure to sell to a clash of personalities again? A. No, sir. Out in Grand Prairie there is another proposition. They have, besides their company sources of supply on tires and batteries, things that the company handles their credits on. There is a proposition out there with a couple of local jobbers out at Grand Prairie. It might be in some instances to those

boys' advantage to do business with the local jobber in Grand Prairie rather than do business with a jobber in Dallas.

I know that to be the case of one of them, because one of the local jobbers out there is doing business with him so he is doing business with the local jobber rather than us.

Q. You call on these stations regularly! (3891) A. Yes, sir.

- Q. Does Vic Robertson carry tires and batteries? A. Yes, sir.
  - Q. What brand tires. A. Goodrich.
    - Q. And batteries? A. Goodrich.
- Q. What about accessories? A. He carries some Goodrich accessories. I sell him some accessories.
- Q. Does he own the station? A. No, sir. He has a leased station.
- Q. How about Fox and Stiles, at South West Third?
  A. I understand that is a leased station, too.
  - Q. You visit there all the time, do you? A. Yes.
  - Q. Do they carry tires? A. Yes, they carry a few tires.
  - Q. What brand? A. Firestone.
- Q. Batteries? Do they stock batteries? A. Very few batteries they stock. What batteries I have seen there are Firestone.
- Q. How about accessories? A. They carry Firestone filters, fan belts.
- (3892) Q. Do they lease the property? Is that a leased station? A. I understand it is a Texas Companyowned station. Leased.
  - Q. That is a leased station? A. Yes.
- Q. How about Paul Vogel? A. Yes, sir. I sell Paul, I would say, a large percentage of his repair items, ignition parts, brake parts, a few mufflers, tail pipes. He does quite a bit of repair work in connection with the service station business.

- Q. Does he carry tires? A. Yes, sir. He carries a few tires.
  - Q. What brand? A. Goodrich.
- Q. How about batteries? A. I think he handles both Goodrich and Delco.
- Q. And accessories? Is it a varied line? A. Varied line, yes, sir.
- Q. Does he own that property? A. No, sir, I don't think so.
- Q. It is a leased station? A. Yes, sir. The property belongs to Dr. Harris, but I understand it is a Texaco lease.
  - Q. How about W. R. Cornett? A. Yes, sir.
  - Q. Do you sell to him? (3893) A. Yes, sir.
- Q. What do you sell to him? A. Repair items, I would say, more than anything else. A few chemicals. Mufflers, tail pipes, ignition parts, grease seals.
  - Q: Does he carry tires? A. Yes, sir.
  - Q. What brand? A. Firestone.
  - Q. Batteries? A. Firestone.
- Q. Accessories? A. He carries quite a few Firestone accessories, and some other brands; light bulbs and things like that. Occasionally different brands of those displayed.
  - Q. Is he a leased station, too? A. Yes, sir.
- Q. How about Emory Johnson! A. Emory Johnson is not there any more. I don't know the name of the new operator over there.
- Q. Is that the company-owned store? A. No. That is a leased station. It is a small station and it changed hands two or three times in the last year.
- Q. There was one that you mentioned that was taken over by the Texas Company itself. (3894) A. That is a company station at the corner of Fort Worth Avenue and Hampton Road.
- Q. That is none of these I have mentioned so far? A. No, sir.

- Q. You say Emory Johnson is out of there about a month? A. Yes.
- Q. What did you sell to him? A. I sold him some supplies, a few radiator hoses, an occasional filter or two.

Q. Did he carry tires? A. I don't believe he has a stock of tires.

- Q. How about batteries? A. A very small stock, if any.
- Q. And do you recall the brand? A. I don't.

Q. Is his a leased station? A. Yes, sir.

Q. What about Flippen? A. Flippen is a new operator at that station. He has been there some three months I guess. Charles W. Moore formerly operated that station.

Q. How long had Moore been there? A. Several years.

I don't know from my own knowledge.

Q. Had you been dealing with Moore? A. Yes, sir.

(3895) Q. What did he buy? A. Supplies more than anything else. Wash rack supplies.

Q. And did he carry tires? A. A few.

- Q. Do you recall what brand? A. Firestone.
- Q. And batteries? A. Firestone.
- Q. Accessories! A. He carried very few accessories. Most of what he carried were Firestone.
  - Q. What type station was that? A leased station?

    A. Yes. It is a small station.
- Q. How about the current operator, Flippen. Does he carry tires? A. He carries a few tires, yes sir.

Q. What brand! A. Firestone.

- Q. How about batteries? A. Yes, sir, Firestone.
- Q. Have you sold him anything to date? A. I sell him a few chemicals, repair items.
- Q. Is there any reason why you don't try to push your battery?

Mr. Lorenzen: I think that was explained by the (3896) officer of the company.

A. I can give you my reason.

#### By Mr. Dias:

Q. Yes? A. It is that nationally-advertised batteries, most of the service station operators had rather carry a nationally-advertised battery to take advantage of the national advertising on it. That is strictly an opinion.

Q. Are there any Conoco stations in your area? A. Yes, sir, there are a few Conoco stations in my area.

Q. Do you sell to them? A. I don't believe I sell regularly to but one Conoco station.

Q. Have you tried to sell to the others? A. Yes, sir.

Q. Is that a clash of personality there again? A. Maybe because I am not a good enough salesman. I have called on them.

Q. What reason, if any, was given for their not buying?

A. I can't recall specific reasons.

Q. You sell to one? A. Yes, sir.

Q. What does he buy? (3897) A. Supplies, repair items.

Q. What is his name? A. Samford—S-a-m-f-o-r-d.

(3898) Q. Where is he located? A. 2,000 Fort Worth Avenue.

Q. What do you sell to him? A. Shock absorbers, mufflers and tail pipes, brake parts, occasionally ignition parts, some chemicals.

Q. Does he carry tires? A. Yes, sir.

Q. What brand? A. Goodrich.

Q. Batteries! A. Goodrich.

Q. Accessories? A. A varied line.

Q. Is he a leased station? A. I believe he told me that so far as his petroleum products were concerned he was a commission agent for Continental Oil Company.

## Lee Barton, for Commission-Cross

## (3899) Cross-examination by Mr. Lorenzen:

Q. You testified in each of these cases, when you were asked what kind of accessories these dealers stocked, you said they had varied kinds of accessories in many of the cases? A. Yes, sir.

Q. How did you know that? By observation? A. Yes,

sir.

Q. You saw those accessories in the station? A. Yes, sir.

Q. Of course you don't remember every item that you

sold to each of these stations? A. Certainly not.

Q. You may have sold some of the others some spark plugs or chemicals that you don't exactly remember now? A. No, sir.

Q. That is a possibility? At Sure, it is possible. It is not a possibility, it is a certainty. You can't remember

everything.

(3900) Q. Did you sell them other things that you haven't told us about this morning? A. It is entirely possible, yes.

Q. You see a number of other salesmen of other companies traveling around the same service stations you call on from time to time! A. Yes, sir.

Q. How many are there in this area? Around 30 or 40 competing jobbers calling on service stations? A. It would be hard to say. It is a highly competitive business.

Q. There are a lot of them? A. Yes.

#### John W. Green, for Commission-Direct

(3901) JOHN W.-GREEN was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

#### Direct examination by Mr. Dias:

Q. Will you state your full name for the record? A. John W. Green.

Q. And your position with the Texaco Company? A. Regional Manager of the Southern Region, San Jocinta Street, Houston, Texas.

Q. Will you slowly and clearly tell us what this setup is? Before and after, starting with before. A. You are

talking about our organizational setup?

Q. Yes. A. For approximately twenty years we have operated under a system of territories and districts in which our field organization had state managers and zone managers in the field, in each of the districts. The Southern territory, (3902) for example, comprises four districts which are now termed as division under the new organizational setup.

Q. Four districts? A. Four districts. Actually, it has been changed to divisions, Mr. Dias, under the new setup.

Q. It now has four divisions? A. One headquartered in Dallas, Texas; one in Houston, Teaxs; one in New Orleans, Louisiana; one in Atlanta, Georgia.

And the territory covered by those four divisions is eleven states.

(3905) Q. And the chief clerk, what are his duties? A. He is chief clerk, compiles records and keeps information on sales and operations and sees that policy letters are handled through our office.

Q. Would that include TBA information? A. That is

correct.

#### John W. Green, for Commission-Direct

Q. What would his duties be in connection with TBA? A. None other than to see that the information, reporting information from the divisions, is properly reported to New York and that copies are received in our office just for our general information.

(3907) Q. You are still employed there? A. I hope so. My duties as regional manager, I have indirect supervision over all sales and operating matters that come within the southern region. That is indirect supervision.

Q. That includes Atlanta? A. Yes.

(3908) Q. Atlanta and Dallas? A. That is correct. And I have direct supervision over personnel, salaries, promotions. It is my duty to see that all company policies, company practices, and our methods and procedures of doing business are carried out in the field; that they are first passed on to the field and then carried out in the field.

I work in more or less of a liaison position between New York—I am actually carried on the New York staff from a title standpoint, but my work is liaison, one between the New York management and the field, to see that these policies and instructions and the methods are handled properly in the field, in the divisions and in the districts, and in turn make certain recommendations to our New York management from the field concerning recommendations for changes in our policies and programs that would improve our business in the field.

Q. So that you are not responsible to any of these new people here in the field? A. No, sir.

Q. You are just responsible directly to New York? A. That is correct.

Q. And these district representatives, merchandising and dealer sales, are they the only two that are connected

# John W. Green, for Commission-Direct .

or have any concern with TBA? (3909) A. That is correct. Wait a minute. District representatives? Wholesale, too.

(3910) Q. Do I have all the personnel that are interested or concerned with TBA at this level right here in Dallas? A. Yes, sir.

Q. And it will be true also it will not be true in At-

lanta! A. It will not be true in Atlanta.

Q. In Atlanta—to save you coming on again—who will be the personnel in charge of TBA there? A. It will be salesmen, zone managers, state managers, and division managers. Of course, in each of our divisions, not in the line organization but in a staff position, we have our representative of TBA sales who devotes his entire time to the promotion of TBA within the division.

Q. I have met him. A. Mr. Roberts here in Dallas, and

Mr. Ferguson in the Atlanta division.

Q. Here in Dallas we will have merchandising representatives, (3911) dealer sales representatives, and wholesale sales—these are all district representatives? A. That's right.

Q. That is the entire crew involved with TBA primar-

ily! A. That is correct.

Q. In Atlanta where the old system is in effect it will be the salesmen, (zone managers, state managers, and division managers? A. That is correct.

Q. You may or may not know anything about this. The other day I believe Mr. Burgess mentioned—he is the zone

manager. A. That is correct.

Q. He mentioned that salesmen receive bonuses on lubricating - A. Sales of lubricating oils and greases. Merchandising salesmen receive a bonus on gesoline sales.

## John W. Green, for Commission-Direct

Q. And the zone manager receives— A. On lubrication oils and arrange arrange arrange and arrange arran

ing oils and greases only.

Q. Then it was his assumption that the man just above him also received a bonus. A. No, sir. State managers do not.

Q. The bonuses stop at the zone manager level? A. That is correct. Under the new setup the bonuses stop at the salesmen's level.

(3914) Q. Under this new setup do the divisions report to the region and the region to— A. No, sir. Regions report direct to New York. They merely furnish us a copy for our files.

Q. So you have eliminated that step? A. That is correct. Not only on TBA but all other matters of similar reports and records. With the exception of personnel.

- Q. Has that increased or decreased the number of personnel that deal primarily with TBA? In the territorial office there used to be— A. Assistant territorial manager that handled TBA.
- Q. And you had a clerk or staff of assistants? A. That is correct.
  - Q. Do you still have that? A. I beg your pardon?
- Q. Does each division have that now? A. Yes. Where it has decreased the personnel from the territorial standpoint, the divisions have been increased.
- Q. So that each division now has a man in charge of TBA? A. That is correct.
- Q. And they have a clerk? A. They have a representative of TBA sales in each division, and they have a TBA clerk in each division. And you have the (3915) district representative of merchandising and of dealer sales and of wholesale sales that are interested in TBA sales out in the field.

## John W. Green, for Commission Cross

#### Cross examination by Mr. Lorenzen:

Q. Mr. Green, you testified that part of your duties were passing along to the field the policies as made by the home office in New York. A. That is correct, sir.

Q. Does that include the policies with respect to TBA?

A. That's right, sir.

(3916) Q. Can you tell us what those policies were which you passed along to the field? A. Yes, sir. It has been our policy ever since I have been connected with the Texas Company that our dealers are independent merchants. They are free businessmen and have a right to make a choice of any type products that they wish to sell and sponsor, generally speaking.

Q. That is part of the policy that you transmitted on down to the field? A. Yes, sir. It is not only transmitted originally, but it is brought up to date every year and

re-transmitted again, sir.

Q. Is that policy kept a secret from people outside of

the Texas Company? A. No, sir.

Q. Have there been any occasions when that policy has been passed on to others outside of the Company? A. Yes, sir. Occasionally dealer organizations in the various communities, and possibly other people—we have had several calls and maybe a letter or two asking us just what our policy was in respect to our dealers, and we have always been very happy to give them that information both verbally and have written them to that effect and furnished them a copy of our printed form of our statement of policy.

Q. That is the policy that a dealer may select what

TBA he (3917) wishes? A. That is correct.

Q. Have you had any complaints that that policy has not in fact been carried out in the field from any organization? Let's take specifically this Dallas area now, because that is where the testimony has been. A. None that has ever come to my attention, sir.

## John W. Green, for Commission-Cross

Q. Have you specifically had any complaint from the Continental Battery Company? A. No, sir.

Q. Would that type complaint get to your office in the normal course of events? A. Oh, yes. If it involved a public relations matter, it would certainly reach my office. If the complaint were made in Dallas it would come to the attention of the division manager who would in turn forward it to me.

Q. You said that among other duties was one relating to the promotion of salesmen, I guess, and all other personnel. A. That is all personnel within the region, yes sir. Salesmen on through division managers.

Q. In connection specifically with the salesmen, will you state on what factors you base your action as to the promotion of a salesman? A. Let me explain it on this basis. In the event that the Dallas division wished to compensate a salesman with an (3918) increase in salary, or maybe they wanted to promote him, we have certain forms that they would make up within the Dallas division. That form would be attached to the man's personnel record folder, which we keep on him from his date of employment, and on these forms, on the back of them, it would list his progress on petroleum sales, the current year and the previous year, both broken down by gasoline and oils and greases, and his general overall comments as to why he has recommended the raise for the salesman.

Q. In that connection, is any part of your action based upon the TBA sales of the customers who are within that particular salesman's territory! A. No, sir. I would have no way of knowing what his actual sales were. The only TBA figures I get are the composite figures from the division. It is not broken down by individual employees or salesmen. The information is not shown on the recommendation for raises or increases in salary.

K. R. ROBERTS was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

## (3919) Direct examination by Mr. Dias:

Q. Will you state your full name and position with the Texas Company? A. K. R. Roberts. I am representative of TBA promotion for the Dallas division.

Q. You have nothing to do with the Atlanta division?

A. I have absolutely nothing to do with the Atlanta divi-

sion.

Q. How long have you been with the company? A. Sixteen years.

Q. Do you have these statistics that we have asked for, the number of Texaco outlets and the sales area? A. Would

define the sales area there that you-

Q. The City of Dallas. A. The city limits of Dallas. I believe in the City limits of Dallas we have 142. These statistics were around the end of 1956, therefore I wouldn't want to be quoted right to the exact figure.

Q. But the office here certainly knows how many Texaco stations there are in the City, does it not? A. Yes, sir.

But we are liable to take on a new station-

Q. Since we started this morning? A. Yes, sir. In fact, we have opened several. We, on the other hand could have lost some, too, since that time.

Q. Of that 142, how many are leased stations? (3920)

A. If you would take Dallas County on that, I think I could give you a little better or more definite figure.

Q. You tell us what Dallas entails. Is that the City of Dallas and suburbs! A. The City of Dallas, County, and only the suburbs. Dallas itself occupies a pretty large percentage of Dallas County, and I think Grand Prairie, Irving, and Garland would be the only towns of any conse-

quence that would be in Dallas County besides the City of Dallas itself.

Another thing, when you talk of Dallas we talk of greater Dallas, because there is Highland Park and University Park located right in the middle of Dallas, which are really not incorporated in the City of Dallas. They have their own government, but they are right in the middle of Dallas.

Q. Would you include those in the figures—did you include those in the figures you gave us? A. In Dallas proper, yes, sir.

Q. That 142 would take care of the people in that area?

The stations in that area? A. Yes, sir.

- Q. Now, as to "C" or leased stations, how many of those 142— A. I am going to have to expand that a little bit if you want the exact number of "C" stations and go to Dallas County, because Dallas County is what I have that for. That is (3921) certainly in all respects within the Dallas marketing area, because these towns, none of them, are over about 15 miles from downtown Dallas.
- Q. Do I get the bigger bite by asking for Dallas County?

  A. Yes, sir, you will get the bigger bite.
- Q. May we have that? A. Of course, testimony so far has been varied on that.
- Q. What about the 142. Is that Dallas County? A. That is greater Dallas City limits. Dallas County we have approximately 190 stations.

(3924) So that the number of service stations would be 119 plus 66. A. Correct.

'Q. And the number of service stations in 1956 would be 124 plus 66. A. Yes.

Mr. Dias: I would like to have marked next (3925) Commission Exhibit 163-A and B for identification.

(The document referred to was marked Commission's Exhibit 163-A and B for identification.)

## By Mr. Dias:

Q. Will you refer to your copy, Mr. Roberts. Total number of outlets nominated to and approved by Firestone in 1955 was 120 to Firestone, and 71 to Goodrich. That makes a total of 191. If I understand this other document, there are only 185 service stations. Is that correct? A. That is correct. That is easily explained, Mr. Dias.

We have some service stations that handle some Firestone and some Goodrich merchandise. And we also have a number of service stations that are so small, and probably a grocery store type of account, that there wouldn't be any TBA potential.

- Q. Does this document, 163-A, show the number of that type account? In other words, those stations that are so small that they would not be a potential TBA supply point? A. No, sir.
- Q. Do you know how many there are of those? A. Ne, sir, I don't, off hand. I really don't.
- Q. Are they included in this figure on 162 then? A. Yes, sir. They would be included on that.
- Q. In other words, in 1955, there were 185 service stations in all? That number would include this type station that (3926) would not handle TBA, is that right? A. Yes, sir. The few of those that wouldn't handle TBA would be included.
- Q. It would also include those few stations that handle both Firestone and Goodrich? A. This exhibit, Commission

Exhibit 162, includes all of the service stations in Dallas County.

Q. I don't distrust your figures. I just want to know how to read this. A. I think 4-A will probably help you.

Q. Do you have another documents A. No, sir.

Q. Did you say 4-A? A. Exhibit 163, Section 4-A. I am just assuming what you are probably confused on.

Q. 4-A indicates those stations that—forgetting the rest of it—buy both the Goodrich and Firestone lines, is that correct? A. And competing TBA.

Q. Just ignore that temporarily so that we get this picture. Thirty-four, under 1955, and the other under 1956. Taking 1955, would they be included in this total figure of 120 and 71? A. Would you repeat that?

Q. The number buying Firestone in 1955 were 120. The number (3927) buying Goodrich were 71, or nominated to and approved by. That is a total of 191. This 34 figure down here in 4-A, would you subtract that 34 from the 1911 A. No, sir. You have two different exhibits here. Your Exhibit No. 162 shows you the total number of Texaco service stations. It has absolutely nothing to do with TBA cept if they did handle TBA what classification would we put them under under C, D, B, and E.

In your second exhibit, Commission Exhibit 163, it gives you a breakdown more or less of the buying habits of these particular stations, not necessarily buying habits because it is possible for a station to be on this list over here—

Q. In two or three spots? A. No, sir.

Q. In other words, he could be under Firestone listing and he could be under the Goodrich listing and under the combination? A. No, sir. If you will read that real well, you will see that there is not any duplication of dealers anywhere in this.

Hearing Examiner Kolb: The 34 is added to the 191? Is that right?

The Witness: No, sir.

(3928) Mr. Lorenzen: Do you mind if I try to clear this up for you?

Mr. Dias: Not at all.

Mr. Lorenzen: Incidentally, I may say we didn't choose this way of setting it up. It was in response to your letter. This is exactly—

Mr. Dias: This? Mr. Lorenzen: Yes.

Mr. Dias: It couldn't be, I couldn't even begin to ask for it.

Mr. Lorenzen: You can tell in part, can't you, Mr. Roberts, the duplication by looking at 4-A? You find there, for instance, in 1956, that you have 30 stations who buy from both Goodrich and Firestone designated supply points in addition to other competing goods. Is that right, thirty of those?

The Witness: That is correct.

Mr. Lorenzen: That means that those are nominated to both Firestone and Goodrich, so that you have them included in both the 146 figure of outlets nominated to Firestone in 1956, and in the 67 figure of those nominated to Goodrich that year!

The Witness: Correct. I probably made an error in answering the Examiner's question when he said 191. I was looking at this figure over here (indicating). So (3929) what he asked was wrong in one sense but I would have given him a better answer had I looked at this. Thirty-four is not in addition to 191, but 34 is included in the 191.

#### By Mr. Dias:

Q. This is what helps confuse me. The 1955 figure on Exhibit 162, the total number of service station accounts is 185. As I understand it, that includes also those that don't even handle TBA because they are too small? A. That is right.

Q. It seems to me that that figure should be larger than any combination of figures that you can come up with over

here? A. No, sir.

Q. That is not so? A. Because there are a number of these stations in there that handle both. Therefore, when you add—you would use them twice.

Mr. Lorenzen: As we just brought out, in 1956 you have a duplication of 30 stations, which are on both lists and of 34 stations in 1955.

Hearing Examiner Kolb: That will reduce Goodrich to 37 and Firestone to 116?

#### By Mr. Dias:

- Q. Could you supply a figure showing the number of outlets that you have that are not nominated because they are too (3930) small to handle TBA! Do you have any idea of that! A. We would have to research that. I would say in Dallas County they are relatively few. There are a few of the Safety Service stations that are not nominated to them although solicitation of that account, promotion of those accounts, TBA, is carried on.
- Q. You mentioned Safety Service stations. Does this list include the 7 or 10 in the branch? A. Yes, sir.
- Q. Is each one listed as a separate station? A. Yes, sir,
- Q. How many are there? Seven or ten? A. I think there is about 10 of those now. That is a guess.

Q. Are they "D" accounts or "C" accounts! A. "D" accounts. Some of those Safety Service stations are in these figures over here. Sont of them-you see, here is the thing that may probably confuse you slightly. A service station would be on this thing if he buys one or more dollars TBA per year.

Q. I understand that. Under Goodrich it shows 71 in 1955, nominated to and approved by Goodrich. Does 2-A indicate that of that 71 only 18 purchased? Is that correct? From Goodrich? A. No. sir. That means that only 22-

you are using 1955?

(3931) Q. Yes. A. Only eight of them bought B. F. Goodrich and non-sponsored merchandise. An additional 34 of them bought Firestone and Goodrich and non-sponsored merchandise.

Q. What does this mean, in 2-A:

"Buying competing items of TBA from any supplier not on either B. F. G. or Firestone list of suppliers." Are you referring to those designated supply points of those two rubber companies? Or are you referring to independent suppliers? A. "The number buying B. F. G. TBA from designated Goodrich supplier and also buying competing items of TBA from any supplier not on either B. F. G. or Firestone list of suppliers." Here is exactly what that means. That means that 18 are buying B. F. Goodrich merchandise and, in addition, are buying merchandise from one of these 65 to 75 TBA supply houses or wagon jobbers located in Dallas County. It does not include we have broken that down and given you in 2-B the figures because our B. F. Goodrich supply source here in Dallas also handles non-sponsored brands of merchandise, such as Delco batteries and miscellaneous accessory items.

Q. Is there only one B. F. Goodrich designated supply

source in town? A. Yes. sir.

Q. Are there other B. F. Goodrich supply points? This will help— (3932) A. There would only be in an emergency basis only, or what the B. F. Goodrich Company terms emergency basis only, because we don't term it that. A dealer is certainly free to buy any place that he chooses to buy from. But for simplicity of it, and for the best of service, they set up a designated supply source.

Q. That is for accounting purposes, too, isn't it! A. Not necessarily. Exactly why they set it up I don't know. I don't work for B. F. Goodrich. But one of our dealers could go into one of their stores, which they have two or three of in the Dallas area, and could buy that merchan-

dise.

Q. Read 2-B to yourself and see if I can get that cleared

up. A. I have it clear.

Q. That indicates to me that there are Goodrich and Firestone. Let's refer to Firestone. That there are Firestone supply points in town that are not designated supply points and that when purchases of Texaco accounts are made from there Texaco gets no commission, is that right or wrong? A. No, sir, that is not what this particular one refers to. What this refers to—and there is one station in this class because he buys his entire TBA from B. F. Goodrich supply source, and included in that is nonsponsored brands of TBA which this supply source handles, besides the (3933) B. F. Goodrich TBA. Therefore in this one instance he buys nothing in the TBA line from anyone other than the designated B. F. Goodrich supply source, although a good bit of that merchandise is nonsponsored merchandise and the Texas Company receives no commissions on it.

Q. You have the alternative in there, or Firestone list of suppliers? A. That was just taking it a little further so there would be no confusion in it, where there might be Firestone.

Q. In 3-A I think it makes it a little clearer. I think it points out the confusion which was in my mind on this: "Number buying Firestone TBA from designated Firestone supplier, and also buying competing items of TBA from any supplier not on either Goodrich or Firestone list of suppliers."

Let me point out what it is that is bothering me. Is there more than one Firestone distributor in town? Do you know? A. Yes, sir. There are quite a few Firestone distributors. The Firestone Tire & Rubber Company has what they call a master supply point set-up at one of their stores here that also does quite a bit of wholesaling not only to Texaco service stations but to any service stations.

Q. Is that place that you talk about the designated Firestone supply point for your Texaco stations, or is there (3934) more than one? A. It is designated by Firestone; yes, sir, as their supply source, and I believe that fight in Dallas it is the only one.

Q. Then— A. Their other stores are sometimes used as emergency supply sources, and incidentally one or two of them regularly service one or two Texaco dealers. But in those instances they are set up as a supply source, even though I would say it is an auxiliary supply source instead of an emergency, in my terminology.

Q. Is there any Firestone supply point that is not designated as you described and not designated by Firestone, where if a Texaco dealer were to make purchases of Firestone products there, there would be no commission payable on that purchase! Is that a situation! A. I couldn't answer the question on whether there is or whether there could be. It is entirely possible that sometimes a dealer could go into one of their stores and make a cash purchase on a thing and no one would ever know about it.

Q. In 4-B, do those figures, 2 and 1, for the year 1955, indicate that there are that number of Texaco stations buying Goodrich or Firestone TBA from a designated supply point of either of those, and of course all the other (3935) competing items, and yet Texas got no commission? Is that what that indicates? A. Yes, sir. The explanation for that is this: It would include in the year—if you will notice in 4-B we have two in 1955—if you will notice in 1956, under 2-B, we have 1. These two will total out, 2 and nothing is two, and one and one is two.

Here is the answer to that. In 1955 one of the men that appear there also bought some Firestone merchandise. In 1956 he didn't buy any Firestone merchandise. These two dealers are brothers. They are part owners of the Dallas service station supply, which is B. F. Goodrich's designated supply source for the Dallas metropolitan area.

Q. Is that Rush? A. That is the Rush brothers. I think there is probably some other financial interest in this company but they are principally the owner. They buy fairly well exclusively from their own organization. In other words, if any one of them bought anything from a wagon jobber or TBA supply store he would have it billed to Dallas Service Station Supply and then bill his own station from Dallas Service Station Supply to the station.

That basically is these two accounts that are listed in there. I think that statement on it probably will clear up that confusion that I am sure existed in your mind.

(3936) Q. You thought there was only one designated Firestone supply point. Is that true! You are quite sure of that! A. No, sir, I didn't say that.

Q. I thought you said there was this master warehouse.

A. Principally there is this master warehouse. What they would like—and I am speaking of Firestone—they would like to have their total service station business come

through that supply source, which is fully set up to take care of service station business, that is, by delivery trucks and by salesmen that call on service station business.

Q. What records was this 163 made from, Mr. Roberts?

A. 163 was made from severals. I would like to point this out, as you bring that up. There was certainly no attempt made here to not give you the 1952, 1953, and 1954 figures. I would like to explain this because I think it is very essential to it.

I was assigned to this job in November 1954. I got on the job in the latter part of November, and two days after I came into the division office our TBA clerk went to the hospital and has never returned to service. In fact, it is my information new that he is on a total disability or going to take early retirement. That I don't know for sure. But there is no continuity on record keeping on anyone going out and anyone coming in on this. I am quite sure he did a good job of keeping the records but he did probably too (3937) much of the records in his own mind, probably. I think in most divisions you will probably be able to get that information maybe for 1954 and possibly, in some cases as far back as 1953.

Q. I am familiar with some of the forms, S-40, S-79, and so on. Is there some form of that type that your office gets this information on, and which is compiled on that type? A. Yes, sir.

Q. Can you tell us what those forms are? A. No. 1 of this was taken from the S-40 cards. It was a visual count of the S-40 cards maintained by the TBA clerk.

Q. And 2-A? A. I think I can go right on through and

give you the whole business.

Q. Please do. A. The other was taken from information given to me by our salesman in this area—not all of it; I will have to take that back—that is taken partly from the S-40 cards and from the S-79.

Q. And between those two you are able to compile those figures? A. Yes. Plus some of our salesmen actually contacting the dealers on getting some of the information on competitive or non-sponsored sources.

(3938) I explained all the rest of it outside of No. 1 in

that one statement.

Q. All the rest of these were taken from S-40s, S-79s, and salesmen's information? A. Yes, sir.

Q. 2-A through 6. A. Yes, sir.

Q. Did you find out through the same sources how much unsponsored TBA was purchased by the Texaco outlets?

A. No, sir. Do you mean dollar volume?

Q. Yes. A. No, sir.

Q. Do you have records which show the amount of non-sponsored TBA purchased by Texaco outlets? A. No, sir.

Q. Then how was this information obtained that the stations were buying other items of TBA? A. By visual observation of the salesman and interrogation of the dealer, as to whether he bought this merchandise. But no attempt was made to get the amounts of merchandise. We don't think in the first place that it is any of our business, and in the second place all dealers being independent, Texas dealers are even more independent than dealers you will find in other parts of the country, I believe.

Q. Do your records also show the amount of purchases by these (3939) Goodrich stations of sponsored products? Goodrich and Firestone? The volume of purchases? A.

Yes, sir.

Q. Is that obtainable from the S-40 and S-79 forms? A. Yes, sir, it is recorded. Not only S-40 any more. S-40 cards in prior years—not in prior years but in times gone by, an S-40 card had the purchases on it. When we switched over to IBM, the only thing the S-40 card does is a sort of a header card. All it has now is information on it, not any dollars and cents figures of any description on it.

Q. But you do have a record of the amount of purchases by each of the stations in this area, do you not? A. Yes, sir.

Q. Would that be much trouble to getf A. Yes, it would.

Q. Would it take too long to compile the information? Doesn't this office, like the Omaha office, get a monthly

statement from the division office? A. Yes, sir.

Q. And in one year's time there would be just 12 such statements and that gives you the information as to purchases, does it not? A. Yes, sir. That would be for the entire Dallas division, the Dallas area. It is of course broken down on that. But we are talking about one thing with the Dallas city limits, (3940) we are talking about another with Dallas County. We have had zones 1 and 2 which were in Dallas but also include some territory outside of Dallas maybe as far as 60 and 70 miles away which would be intermingled and it would be a tremendous job to pull out and pin down to any of these figures that you have here on this number of dealers because they are all intermingled by zones and not by just Dallas itself or Dallas County.

Q. When salesmen got the information on other TBA items, didn't they get similar information on their purchases of Firestone and Goodrich products? A. No, sir.

Q. It was the salesmen who got the information from which this was compiled, to the effect that these stations also carried other TBA items? A. Yes, sir, and of course headquartering in Dallas I have had occasion to see a number of Texaco stations. All of this was on my own, and to be doubly sure that the information that I already thought was 100 percent correct was verified by someone other than myself.

Q. In Chicago or Omaha there was quite a survey made. Is that what was done here? A. I wouldn't call it a survey in the sense of a survey. There again you have a different—we run into a definition of exactly what a survey is.

(3941) Q. Did they fill out questionnaires, each of these stations or each of the salesmen! A. The dealers absolutely did not fill out any kind of a questionnaire. We asked the salesmen to supply us with certain information, and the salesmen did that, sometimes in one form and sometimes in another.

Q. In other words, you had no formal questionnaire made out filled in by the salesman? A. Yes, sir. We have had two such things as that on different phases of it.

Q. When was that? A. Some of the information is not

directly related to this.

Q. When was that survey made? A. October. December.

Q. October and December. A. You are calling it "survev."

Q. What do you call it? A. I would say a sort of com-

pilation of information.

Q. Compilation of research. When was it? One was in December, did you say? A. Yes, sir.

Q. When was the other one! A. October.

Q. Do you have those available? The results of that surveyt

Mr. Lorenzen: I think we have them.

- (3943) Q. What are your duties—your other duties in connection with TBA? A. My duties on TBA, I think my job title-is very descriptive. I am the representative of TBA promotion. It has become commonly known as the TBA representative, even to the point of some of the representatives TBA promotion calling themselves TBA representatives.
- Q. When you give me this, it is as of now and as of January! Your duties haven't changed any in the switch-

#### K. R. Roberts, for Commission-Cross

over? A. No, sir. The title is and has been "Representative, TBA Promotion." The exact title. Most of us refer to ourselves as TBA representatives because we are so referred to by the average employee of the company.

My job is a very complex one in a lot of ways. It takes

quite a while to describe it.

(3944) Q. Before you go into it, is it similar to Mr. Underhill's? A. It is exactly the same as Mr. Underhill's.

Q. You are in the same category as he? A. I am in exactly the same position in the Dallas Division that he is in the Denver Division.

Q. We won't go into it, because we have a description of that office. If that is it there is no point in going into it.

What areas do you cover from here? A. I cover the Dallas Division, which is comprised of the States of Oklahoma, New Mexico, and the north two fifths of Texas. Mr. Green says about a third, and he is probably just about right. It is around a third or two fifths; from about the 32nd parallel, north.

# Cross examination by Mr. Lorenzen:

Q. You said that you are not in charge of salesmen, Mr. Roberts, but you do have some contact with the new salesmen who are employed by the company, don't you! A. Yes. I have contact with of course all salesmen in the Dallas Division. In addition to that the new salesmen, one of my responsibilities, every new salesman that we give our new training to—and that is every salesman (3945) now—about a six or eight-month training course on it—he rides with me, works with me for one week of his training program, and one of my responsibilities during that period of time is to thoroughly explain the Texas Company's policy as regards TBA, and to see to it that he understands his re-

## K. R. Roberts, for Commission—Gross

sponsibilities in regard to that program, and that he thoroughly understands that program so that he will obey the instructions of the Texas Company in that regard.

Q. To your knowledge, has this policy which you have explained been embodied in letters, circulars, letters or directives of some kind which are sent down to you from the division office? A. Time after time.

(3946) Q. Mr. Roberts, I show you a document which has been marked Exhibit 26-A to E and ask you if that is one of the documents stating the Texas Company's policy on TBA which came to your attention as an employee of the Texas Company? A. Yes, it is.

#### By Mr. Lorenzen:

Q. I call your attention to the letter of June 1 which (3947) has been marked for identification as Respondents' Exhibit 26-D and 26-E and ask you whether you are acquainted with the author of that letter, Mr. Hochuli. A: Yes, sir, I am.

Q. At that time what was his position with the Texas Company? A. I believe that he was general sales manager. It may have been that he was vice president in charge of sales at that time.

Q. From the New York office? A. He was from the New York office, and a mighty big wheel.

Q. At about the time of that letter did he have occasion to discuss with you the company's TBA policy! A. He did with me and a number of other employees. Practically the entire Oklahoma organization was in Tulsa for one of our annual or semi-annual sales meetings and he had occasion to discuss this letter with all present.

# K. R. Roberts, for Commission—Cross .

Q. Will you state what if anything was said with respect to the independence of the dealer on that occasion? A. He requoted exactly what he had said in this letter in no uncertain terms, and there was

Q. What was it that he said? A. He said that the dealer is an independent merchant and should be treated as such by all sararied employees of (3948) the Texas Company, and if we did not treat him as such that we would be subject to immediate dismissal.

Q. As far as you know, has that policy of the Texas

Company ever been changed? A. No, sir.

Q. Have you to the best of your ability adhered to that policy in your position as representative of TBA? A. I certainly have.

Mr. Lorenzen: I ask to have this document, dated February 25, 1952, a circular letter No. S-8, addressed to State Managers, Zone Managers, Resale Salesmen, Dealer Service Representatives, Dallas Division, given the next number for identification.

Hearing Examiner Kolb: That will be Respond-

ents' Exhibit 27-A through D.

(The document previously described was marked Respondents' Exhibit 27-A through D for identification.)

#### By Mr. Lorenzen:

Q. Did you receive this letter which has been marked Exhibit 27-A through D? A. I'did.

Q. Did you carry out the policy of the Texas Company as set out in that letter to the best of your ability? A. Yes, sir, I certainly did. I always do to the very best of my ability.

#### K. R. Roberts, for Commission—Cross

(3949) Mr. Lorenzen: I now ask to have marked for identification a letter dated December 28, 1953, addressed to Mr. Sanderson and others in Dallas, with copies to Zone Managers, Salesmen, Dealer Service Representatives, and Representatives Dealer Training, and the enclosure which is dated December 15, 1953 and is entitled "Circular Letter No. 544."

Hearing Examiner Kolb: That will be marked Respondents' Exhibit 28-A through F.

(The document referred to was marked Respondents' Exhibit 28-A through F for identification.)

#### By Mr. Lorenzen:

Q. Mr. Roberts, did you receive the exhibit marked 28-A through F for identification? A. Yes, sir, I received it in its entirety.

Q. Have you done your best to carry out the policies of the Texas Company as stated in Exhibit 28-A through F for identification? A. Yes, sir.

Mr. Lorenzen: I ask to have a circular letter, No. S-96, dated December 13, 1955, addressed to State Managers, Zone Managers, General and Merchandising Salesmer, Dealer Service Representatives, and Representatives Dealer Training, and a one-page printed enclosure, given the next number for identification.

(3950) Hearing Examiner Kolb: That will be Respondents' Exhibit 29-A, B, and C.

(The document referred to was marked Respondents' Exhibit 29-A, B, and C for identification.)

#### K. R. Roberts, for Commission—Cross

#### By Mr. Lorenzen:

- Q. I ask you whether you received copies of this document marked 29-A through C for identification. A. Yes, sir.
- Q. Have you endeavored to the best of your ability to carry out the policies of the Texas Company as set out in those letters? A. I have.
- Q. In connection with your job do you attend meetings of dealers? A. Yes, sir.
- Q. At those meetings do you discuss various aspects of handling and merchandising TBA? A. At some of the meetings, yes.
- Q. Are those meetings limited in any way to dealers who handle only Firestone and Goodrich TBA! A. Not any meetings that we would hold. Any meetings that the Texas Company holds for dealers are open to every dealer that we have in our organization or in the geographic area for which the meeting is being held, regardless of what brand of TBA merchandise it may handle.
- (3951). Q. Do you know of dealers who do not handle Firestone and Goodrich who have attended those meetings?

  A. Yes, sir.
- Q. Have you endeavored, in connection with your job as representative TBA promotion, to keep secret in any way the policy of the Texas Company as to the independence of dealers? A. No, sir.
- Q. Have you had occasion to discuss it with dealers?

  A. Yes, I have.

# Van J. Smith, Recalled, for Commission-Direct

(3952) VAN J. SMITH was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

Direct examination (resumed) by Mr. Dias:

- (3953) Q. Do you know when the Texaco salesmen were classified as general and merchandising salesmen for the first time? A. I believe that was in 1954. Yes.
- Q. Do you have charge of the salesmen in that area? (3954) A. Yes.
- Q. Do you pass on the information on a new station opening up to the Goodrich or Firestone people? A. We don't have an established procedure for that. Actually, of course, they have men out in the territory all the time and they are pretty well on the job and they see a new station under construction. A thing like that gets pretty well publicized. We haven't found it necessary to establish a procedure.

Q. There is no necessity of you notifying Goodrich or Firestone people of the opening of a new station, or the changing of an operator! A. I don't think so.

Q. Would there be somebody else in your organization that would do that? A. Not as an assigned responsibility, no. sir.

Q. In talking to new operators, whether it be a new station or a change of operator, do you have some sort of sales presentation on TBA? A. Yes, we do.

Q. Can you give us some idea of how that runs? A. We explain to them the advantage of handling a nationally advertised product that has good public acceptance, and one that is in keeping with the high quality of Texaco products, and we explain to them the necessity, as we see it, for (3955) handling a complete line of TBA along with their petroleum products and services and the profit that they

# Van J. Smith, Recalled, for Commission-Direct-

just nearly have to get from additional lines of merchandise.

Q. Do they usually make their selection of source of TBA before they open the station? A. Probably before they open a new station, yes, sir.

Q. How about where there is a change of station? A.

No, that wouldn't be it.

- Q. Station operators usually buy out one another as they succeed one another? A. Yes. In opening a new station, of course, we try—we are not always able to do it—we try to have a dealer selected well in advance of the opening of a station. And of course before he opens he determines his TBA and equipment he will buy and things of that sort.
- Q. So that he will be prepared when he opens his door

   A. That's right. When he opens he would like to get
  in business.

Q. Do you call on them at home in company with a rubber company representative? A. I don't think so.

- Q. Do any of the salesmen? A. I don't think that would be a regular procedure. I don't say that salesmen won't sometimes call on them at home. I don't think I would if I were a salesman.
- (3956) Q. Where would you get these two people together sometimes, the rubber company salesman and the new operator? Would you have them at the Texaco office? A. Let me say again, there is no established procedure for handling that. Those things just work out.

Q. Can you tell me about how they work out? A. That

could be any number of ways.

Q. Give us one. A. Maybe our salesman would see the TBA salesman at a service station, at a dealer's place, and might make arrangements to get together; or he might tell the TBA salesman where he could contact the dealer we are going to put in. Sometimes if we got a new station

#### Van J. Smith, Recalled, for Commission-Cross

going in, they may call us a time or two to find out if we have selected the dealer.

- Q. Who may call you a time or two? A. The TBA salesman.
  - Q. The rubber company? A. Yes.
- Q. That is one of the ways. How else might it come about? A. I suppose by telephone.
- Q. By whom to whom? A. Maybe our man to the TBA man, or maybe the TBA man to our man.
- Q. Any other way? A. I can't think of any other off-hand.
- (3957) Q. How much time do you spend on TBA activities? A. It is a pretty hard question. Of course, lots of our activities indirectly promote the sale of TBA. Probably 10 or 12 percent.
- Q. Is there anybody in your office working on TBA? A.
- Q. Do you have any sort of a quota system for your salesmen! A. Yes. We have objectives. Sales objectives.
- Q. That only involves gas and lubricating oils and that sort of thing? A. No. We have objectives on TBA sales, too.
- Q. How do you base those? A. Well, usually on an increase over the previous year's business.

#### Cross-examination by Mr. Lorenzen:

Q. You testified yesterday that among your responsibilities was looking after the sales and operations of the Texas Company in your zone as outlined by company policy.

In connection with this TBA end of the business I am going to show you some documents which have been marked Exhibits 26, 27, 28 and 29, with subject letters, for identification, and ask you whether you are familiar with those documents and whether you received them as an employee of the (3958) Texas Company! A. Yes, sir.

#### Van J. Smith, Recalled, for Commission-Cross

Q. You did receive those letters or copies of them?

A. Yes, sir.

Q. In carrying out the policy of the company did you adhere to the policies as set out in these Exhibits 26 through 29, to the best of your ability? A. Yes, sir, I sure have, for two very good reasons. One is that there are definite instructions to the company, and the other is that through years of experience we have learned that to get a man to do a satisfactory job you have got to sell him. We adhere to that policy by maintaining the independence of our dealers and selling them the programs that we felt were good business for them.

Q. And have you ever authorized any of your salesmen to threaten a dealer with any kind of punishment or reprisal or cancellation of lease in the event that he did not adhere to purchasing the TBA line of either Firestone or Goodrich? A. No. sir.

Q. Do you know of any case where that has been done? A. No, sir.

Q. Have you ever done it? A. No, sir.

Q. Generally, in connection with the selection of a new operator for any station, will you tell me whether you (3959) interview that new dealer before he is finally selected? A. Yes, sir. As a matter of practice that is the way our business is handled.

Q. Do you know whether as a general proposition before you select him has that dealer committed himself by ordering his TBA from any TBA supplier! A. Oh, no.

No, sir.

Q. The order for TBA comes after the date you make the selection! A. That's right. After we select him as a dealer we handle that, and the other phases like buying his equipment and things of that sort, as he sees fit.

Q. In connection with your discussion, which I think you testified to, that you had a discussion with this new

## Van J. Smith, Recalled, for Commission-Redirect

dealer before he was selected, has the question arisen as to whether or not he can buy TBA from whatever source he selects? A. Yes, sir. I believe we generally tell him that. I think we pretty particularly try to get that done in view of our policy letters and things of that sort.

We like for him to feel, as I said—we try to do a selling job. We think it is the most effective way to operate. We think he accepts our sales talk better if he feels that

he is free to make his own selection.

Q. Have you made any effort to keep the policy of the company with respect to the independence of the dealer a secret, either (3960) from the dealers or from any competing TBA salesman? A. No, sir.

Q. How many dealers have you cancelled out so that they left the station at the termination of their lease, since you have been in Dallas! A. I can remember only one.

Q. What was the occasion of that? A. He gave us several worthless checks, ran out of money, couldn't buy gasoline, and actually, after we issued the notice of cancellation, before the lease expired—before the cancellation was effective—he closed the station because he just couldn't operate any further.

# Redirect examination by Mr. Dias:

Q. These policy letters, how often do you show those to your dealers? To the station operators? A. I can't say that I have ever shown a letter to the dealer. As a matter of fact, it isn't often we show dealers company correspondence. We tell them verbally.

Q. You never have shown them to them? A. I don't

expect we ever have.

Mr. Dias: That is all.

(3961) WILLIAM E. CHILDRESS was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

#### Direct examination by Mr. Dias:

- Q. Will you state your full name, please? A. William E. Childress.
- Q. And your position with the Goodrich Company? A. Until the first of January I was district manager here in Dallas. Since that time I have been transferred to Oklahoma City, same position.
  - Q. District manager? A. That is correct. Of the replacement tire division.
    - Q. And that was until January 1? A. 1957.
- (3962) Q. On 165 you list Dallas service station, Goodrich distributors, and J. A. Eubanks. Are they the only Goodrich distributors in Dallas! A. They are the only ones that are wholesale distributors and supply points here. We have other outlets in Dallas County, yes.
- Q. What type of outlets? A. They are tire retailers. Different types. Some of them (3963) are industrial accounts, some of them are farm tire accounts, and accounts of retail tire dealers.
- Q. These Texaco stations that choose Goodrich TBA, when they want Goodrich supplies they go either to Dallas Service or to J. A. Eubanks, is that correct? A. Are you speaking of Texas?

Q. Texaco stations. A. Texaco is usually handled by

Dallas Service Station Supply.

Q. And Eubanks? A. Eubanks handles Conoco stations.

Q. What happens if he gets crossed up! Suppose Conoco goes to Dallas! What happens! A. They don't usually get crossed up.

Q. If a Texas station went to Eubanks Tire Company, would Texaco still receive a commission, override com-

mission? A. It would be reported, yes. Sure.

Q. And these other types that you mentioned, can they service a Texaco account? A. Generally they don't. It is a different type of business. The B. F. Goodrich stores would serve and could serve as an emergency supply point for any Texaco or Conoco station.

(3964) Q. Will you describe your duties, please? A. I have charge of distribution of our tires, batteries, home and automotive items that we sell in our Dallas district.

Q. Are seat covers on that TBA program? -A. I believe

they are.

Q. Do you know? A. I can't say for sure.

Mr. Barton: I will give you a book on that. I think seat covers are on that list.

#### By Mr. Dias:

- Q. Do you know who manufactures Diamond tires? A. I do.
- Q. Who does manufacture them? A. It is manufactured by the Associated Lines of the B. F. Goodrich Company.

Q. Do you know how many Conoco stations are in Dallas? (3965) A. I think I-can tell you approximately. There are approximately 75.

Q. Do you know how many of those have been nominated to and approved by Goodrich? A. Nominated?

Q. Yes. A. What do you mean.

Q. You know that there are some gas stations that aren't large enough to carry TBA? A. But nominated.

Q. They do not nominate any but those that are large enough to carry them. A. Will you define nomination?

- Q. Yes. The Conoco Oil Company submits a list or the names of various Conoco stations that they recommend carry the Goodrich line, and Goodrich looks over their credit I suppose and decides whether or not they are going to sell them. A. No, it don't work that way. We have a form. I presume that you are referring to that, called notification of dealer change. And after a station has selected our brand of merchandise, then we get this form you see for the reporting of sales, and the effective date that he became a B. F. Goodrich dealer.
- Q. Referring to notification, how many have been notified and approved, or is it accepted? (3966) A. We have the opportunity to either accept or reject.

Q. Do you know how many there are of those in Dallas?

A. I couldn't tell you for sure. A substantial portion of the 75 stations.

Q. Do any of your salesmen ever attend dealer meet-

ings conducted by Conoco! A. Oh, yes.

Q. And they do also attend dealer meetings conducted by Texas! A. Yes. We are invited on some of the meetings to attend.

(3967) Q. Have you personally been present at those meetings? A. Yes, I have.

- Q. Are you usually the one to go or is it more often the B. F. Goodrich salesman! A. It would be our salesman.
- Q. Do you, like in so many other cities, look for a break of new ground for new stations and find your own accounts? Or do Texaco and Conoco notify you? A. No, our people are out covering their area very completely.

They watch for construction or erection of new stations. That is a part of their job.

- Q. Isn't it true that normally the way you get in touch with a new station, either of Texas or Conoco, is by notification from the Texaco of Conoco people? A. To my knowledge I have never heard of it.
  - Q. You have never heard of it? A. No. sir.
- Q. Never heard of what? Notification? A. Being notified.
- Q. In advance? A. No, sir. There is no formal notification that we have.
  - Q. Is there any informal? A. Oh, yes, sure.
- Q. In what form is that? A. Well, it is generally word of mouth. Either our supply (3968) point salesman or our territory manager works in close relationship with the oil company personnel, and he has to be an aggressive individual to try to gain that information so that he can attempt to present our franchise and the quality of our products and the merchandising programs that we have.
- Q. Isn't it true that that is the way you get most of those accounts? A. Oh, sure.
- Q. So that the business of spotting a new location going up plays a very small part in it. Isn't that so? A. Well, it has something to do with it. We can tell by the basic construction whether it is going to be a Texaco or Conoco or whatever type it is going to be.
- Q. As a matter of fact, you get very few, if any, that way, by finding the new location yourself? Isn't that true?

  A. You say finding the location?
- Q. Yes. A. We wouldn't find the location. We might see the location where the construction is under way.
- Q. You would see a location where there is construction under way. There are few of those cases where you make the initial contact yourself. Isn't that true! A. Well, we

have to gain the name of the operator through some other source, yes.

Q. Isn't it true that it is usually through Texaco or Conoco! (3969) A. It wouldn't always be that way. Our man in contacting other stations, we might gain that information from another station operator. He might give us the name. Maybe tour supply point distributor here would gain that information and we would find out who the man was going to be.

Q. How about where a station changed hands? In other words, a new operator going into a station that already exists? There you would have no indication, would you? A. We would because—I presume you are talking about Dallas County still?

Q. Yes. A. Our two supply points are contacting these stations on a weekly basis. We would gain that information from the present operator, or within a few days after the new one is in because we maintain very close contact with him.

Q. He would hardly know who the new lessee is going to be? A. Oh, yes. If a man has a business for sale he is not just going to do it on the spur of the moment. He probably knows about that several days or a week or so in advance. We would gain that information before the station actually changed hands in many cases.

Q. And you would get that information from somebody or some source other than Texaco or Conoco? A. In many cases we would.

Q. Do you have any warehouses in Dallas? (3970) A. Oh, yes, We have a large warehouse here in Dallas.

Q. Just one? A. Yes.

William E. Childress, for Commission—Cross-Reagan Ferguson, Jr., for Commission—Direct

#### Cross-examination by Mr. Barton:

Q. Mr. Childress, Dallas Service Station Supply, and J. A. Eubanks are independent distributors, are they not? A. Oh, yes.

Q. J. A. Eubanks is a Conoco service station operator,

isn't it? A. That is correct.

Q. And had been for sometime? A. He grew into this business after having been a successful service station operator.

Q. And he of course is familiar with and acquainted with all of the Conoco dealers, is he not? A. Oh, yes.

Q. In the same business that he had been in? A. That

is correct.

- (3971) Q. What is the situation with regard to Dallas Service Station Supply! A. We have a similar situation there. Mr. Rush, who owns that business, also operates a Texaco service station, and he grew into this TBA supply business having been successful in operating a Texaco station, and he has a very wide knowledge of Texaco dealers throughout the county.
- (3976) REAGAN FERGUSON, JR., was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

#### Direct examination by Mr. Dias:

Q. Will you state your full name and title, please? A. Reagan Ferguson, Jr., Representative TBA Promotion, generally referred to as TBA Representative.

Q. How long have you been TBA Representative in this

area? A. Since April, 1950.

#### Reagan Ferguson, Jr., for Commission-Direct

(3977) Q. Do you have the number of outlets in the city nominated to Goodrich and Firestone, and the number approved? A. Yes, sir.

Q. May I see that? A. Yes, sir. Two sheets (handing).

Mr. Dias: I would like to mark for identification as Commission Exhibit 167-A and B a document entitled "TBA data for Federal Trade Commission, supplied by the Texas Company, Atlanta standard metropolitan area."

(The document referred to was marked Commission's Exhibit 167-A and B for identification.)

#### By Mr. Dias:

Q. Do you have a copy of this before you, Mr. Ferguson? A. No, I do not.

(3978) Q. Can you tell us how this was compiled? A. As I believe you know, we maintain a card in the division office on each account.

Q. Would you refer to that card by form? A. Form S-40. These figures were obtained from an actual account of the cards that we have on file in the division office.

Under the year 1955, questions 2, and on down from 2, you will note a footnote B referred to there, which indicates that an actual count for the year 1955 was not available.

In the year 1956 we changed our method of handling records in the office from manually prepared records to tabulating machine records. In order to do that we turned all of our cards for the entire division over to our accounting department, to the tabulating machine department, where those things are now formally kept within our TBA department and filed by zones, which would show Atlanta as a separate zone, instead they are setup by the entire four states of our division in alphabetical order, which would make it impossible to get an accurate count on that.

#### Reagan Ferguson, Jr., for Commission-Direct

However, as referred to in the footnote, the percentage of buying accounts to nominated accounts is felt to be very nearly the same as for 1954 or 1956.

Q. These sums here shown under the various years, dothey represent the number for the entire year or were these made (3979) up as of a specific month? A. Those represent the number for the entire year.

Q. Did you say you obtained this information from the S-40? A. Yes, sir. If I may clarify that for you: I S-40 cards for the current year are different from the ones that we had for the years prior to 1956. I don't know which one it is that you have there.

Q. In which way do they differ? A. In that the 1956

cards do not show any actual figures on them.

Q. What about the earlier cards? Do they show the purchases of TBA supplies from other than Goodrich or Firestone? A. No, sir.

Q. Then how did you arrive at these figures for 1953,

'54, and '55? A. Under which question is that?

Q. We asked for the number of each account buying Goodrich or Firestone tires and tubes and/or batteries, and/or accessories. Under the years 1953, '54, and '55 you have indicated that "X" number buy Goodrich from the designated Goodrich supplier, and also buy competing items of TBA from other suppliers not on the Goodrich or Firestone list of suppliers. A. That is from our contacts with the dealers by our salesmen, our zone managers, and myself, and our discussions with the dealers of their buying habits and actually asking them (3980) questions, and from our general knowledge of the accounts.

Q. When did you do that? A. We have done that from time to time over a period of years.

Q. And you kept a record of the fact. A. No, sir, we do not have any records.

#### Reagan Ferguson, Jr., for Commission-Cross

- Q. That is the point you see. How do you know as of 1957 that in 1953 there were 22 accounts purchasing—take 1954, for example—that there were 23 accounts purchasing Goodrich and TBA items from other suppliers! A. We know that all of our accounts were purchasing not exclusively from Goodrich.
- Q. What is the basis of that knowledge? You couldn't designate the name of any particular supplier other than Goodrich or Firestone supply point, could you? A. I suppose I couldn't.
- (3982) Q. Will you explain, just how you got these figures? A. These figures for 1956 were taken from a combination of our S-40 cards and the survey that we made.
- Q. Do these current S-40s show the purchase of unsponsored items? A. No, sir.
  - 'Q. They do not? A. No, sir.
- Q. Then actually the information as to the unsponsored items came from this survey that you talked about? A. Yes, sir.

#### (3984) Cross-examination by Mr. Lorenzen:

Q. Mr. Ferguson, you testified that you were the TBA Representative for this company? A. Yes, sir.

Q. Will you state generally what your duties are in that capacity? A. My job is principally to work with our salaried selling personnel, such as salesmen and zone managers, and also contact our state managers on occasion, and to work with the tire company district personnel and their field selling personnel such as their territory managers and their store managers and store salesmen to coordinate the efforts, of the Texas Company and the Tire

#### Reagan Ferguson, Jr., for Commission-Cross

Companies; to assist Texaco dealers in developing a more successful TBA business; and it is my job to explain and see that our field selling personnel who are charged with carrying out our programs understand the policies of the company as regards our TBA program.

I also contact and work with dealers from time to time and work with the rubber companies in various ways. Sometimes in helping to arrange meetings such as on tire sales, tire trading, or adjustments, or battery and accessory sales, to assist our dealers to become better merchants, to pass on to our field selling personnel the various programs and promotions that we feel will benefit our dealers in helping them become (3985) better TBA merchants and in the long run better and more successful Texaco dealers.

I am sure there are a number of other things that I do, but in a general sense I think that covers it.

(3986) Q. Do you have anything to do with indoctrinating the new salesmen of your company? A. Yes, sir; I certainly do. I always spend time—whenever possible I spend time with the new salesmen or the men as you call them who are salesmen in training, to fully explain the TBA program and the ways in which they can help the dealers, and to explain to them the Texas Company's TBA policy. In fact, I always show them the current letter on Texaco TBA policy, and we actually read it together and I furnish the salesman with a copy of that letter.

Q. I want to show you Respondents' Exhibit 26-D and E for identification and ask you whether that letter came to your attention? A. Yes, sir. I received this letter when I was zone manager prior to becoming TBA representative.

Q. That is you received a copy of that particular exhibit which was sent out from the Atlanta office? A. A letter which I believe stated verbatim the same letter as

#### Reagan Ferguson, Jr., for Commission-Cross

this. I recall it specifically because of the wording of the last paragraph. I was a new zone manager at the time and I was impressed with the emphasis that our general sales manager put on maintaining the independence of our dealers.

Q. You mean that you would get fired if you didn't respect it? A. Yes, sir.

(3987) Q. I show you Exhibits 27-A through D for identification and ask you whether you likewise received a letter identical to that one as to contents in this Atlanta division? A. Yes, sir. I received that and still carry it in my briefcase.

Q. I show you Exhibit 28-B through F for identification and ask you whether that is a letter, the identical contents of which you received? A. Is that one letter?

Q. I believe it is. A. It is dated December 1953. Yes, sir, I did receive that and I also have that letter in my briefcase at the present time. I have had ever since the letter was issued.

Q. I show you Exhibits 29-A, B and C and ask you whether you received a letter similar to 29-A and a document identical with 29-B and C? A. Yes, sir, I received this letter. It was sent to our—I recall that it was sent to our salesmen with copies to our state and zone managers, and dealer-service representatives and other representatives in the field. And I also have that letter in my possession and have had since its issuance.

Q. Are those letters which you said you discuss with the new salesmen? A. Yes, sir. I discuss these and furnish him with copies.

Q. Did that discussion include the portions of the letter (3988) which have to do with the independence of the dealer? A. They certainly did. They covered the letters in their entirety.

#### Reagan Ferguson, Jr., for Commission-Redirect

Q. Did you endeavor to keep that policy of independence a secret from the dealers of the Texas. Company or from competing jobbers? A. No, sir. In any discussion that I have had with the dealers I am sure that I have always left that understanding with them because if I expect them to be successful TBA merchants they are going to have to be sold on the TBA program that they have and the TBA merchandise that they are selling in order to do a good job of selling.

Q. The information which is a part of this Exhibit 167 for identification was compiled by you, was it not, in direct request to obtain statistics as a result of the government's

questions in this proceeding? A. Yes, sir.

Q. And prior to that time, as I understand it, you never kept any specific record to indicate what part of the TBA merchandise in any case—in the case of any one dealer was sponsored and what was non-sponsored? A. No, sir. We did not keep any record of that.

#### Redirect examination by Mr. Dias:

(3989) Q. In addition to these policy documents which date back to 1948 and 1952, do you carry anything else in your briefcase that old? A. I do not have the letter of 1948; no, sir. I do not have that.

Q. How about the one of 1952? Is that in your brief-

case? A. Yes, sir, I do have that in my briefcase.

Q. When did you put it there?, A. When it was issued,

sir, and I have had it there ever since then.

Q. And all these other policy letters, you have those in your briefcase? A. Yes, sir. And they were also placed there at the time the letters were issued. I carry them there for my ready reference and discussions with our field selling personnel.

#### Reagan Ferguson, Jr., for Commission-Redirect

Q. And then I take it that when you spoke to your dealers and wanted to assure them that they were free to buy anything you showed them the letters! A. Well, it isn't common practice to show company correspondence to the dealers. However, I am sure that they were led to understand their independence in these matters.

Q. But you could convince them by showing them the correspondence, couldn't you? There would be no question in their mind then as to the sincerity of the company? Isn't that true? (3990) A. Certainly there wouldn't. I don't believe that there would be any doubt in their mind about it from our discussions without my needing to show them the letters.

Q. And I believe you testified that you never kept it a secret from competing jobbers? A. Of course I have limited contact with competing jobbers.

Q. Very limited, I would assume. You don't normally call on competing TBA distributors and that sort of people, do you? A. No, sir.

Q. As a matter of fact, you call on them very seldom if ever, is that correct? A. Yes, sir.

Q. As a matter of fact, do you ever call on them? A. Offhand I don't recall, sir.

Q. So that when you say you didn't keep it a secret from them it is mainly because you had no occasion to talk to them and tell them, isn't that so? A. Do you mean from dealers?

Q. Competing jobbers and dealers? A. I think what I said was that I didn't keep it from the dealers. I actually have no occasion or very little occasion, at least, to talk to competing jobbers and TBA distributors. The only time that I might talk to them I think would be when I would see them at one of our dealer locations, dealer's (3991) places of business.

#### Reagan Ferguson, Jr., for Commission-Redirect

- Q. And at that time you told them to feel free to walk in and sell all they could? That you would step aside, or the rubber company would step aside? A. I think that they know that they are free to; that we are not in a position to tell them that; that they can't call on our dealers and sell them.
- Q. How would they know that? You said you didn't keep it a secret from them. Did you tell them point blank that they could come in and sell to them? A. No, sir. I was never asked that question by them, and had no reason to tell them that.
- Q. On cross you also testified that you contact rubber company representatives. Which rubber company representatives? A. Firestone and Goodrich.
  - Q. Are there any others ! A. No, sir.
- Q. You don't have any other arrangement with any other rubber company? A. Well, now, we have recently—not for the years which this covered—we have recently started a test program with the U. S. Rubber Company in this particular area.
- Q. When did that start? A. That started about May of last year, I believe, 1956.
- Q. Is that the same type arrangement that you have with (3992) Goodrich and Firestone? A. Yes, sir.
- Q. Full line of tires, batteries, and accessories? A. Yes, sir.
  - Q. That was May of 1956? A. Yes, sir.
- Q. Is it possible that in these figures given for 1956 that some of the other supply points may have been U.S. Royal? Is that possible? A. I don't believe so.
- Q. But you don't know? How could you find out? A. That wasn't what I considered as "Other" in there. I was thinking principally of other brands.
- Q. U. S. Royal is another brand, isn't it? A. Yes, sir, but U. S. Royal does not sell to many Texaco accounts in our area.

# Reagan Ferguson, Jr., for Commission—Reckoss C. T. Fitts, for Commission—Direct

Q. Can you give us some idea of how many? A. Not

offhand; no, sir.

Q. Can you state definitely that when you spoke about "other suppliers" here under 1956, that the other suppliers were definitely not U. S. Royal? A. It definitely referred to other than U. S. Royal.

Q. Other than U.S. Royal? A. Yes, sir.

#### (3993) Recross examination by Mr. Lorenzen:

Q. When you say these competing jobbers and stations on occasion, did you ever tell them that they couldn't sell their merchandise in a Texaco station? A. No, sir. I certainly did not.

Q. And did you ever on those occasions make any recommendation that any reprisal whatever be taken against the dealer because he was buying from them? A. No, sir; never did.

C. T. FITTS was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

#### Direct examination by Mr. Dias:

Q. Please state your full name and title, please. A. C. T. Fitts, 5901 Winters Chapel Road, Doraville, Georgia.

(3995) Q. How many bulk plants do you have in Atlanta? A. One.

Q. Is that company-owned? A. Yes, sir.

# C. T. Fitts for Commission-Direct

- Q. Where is that located? A. 5901 Winters Chapel Road, Doraville, Georgia.
  - Q. Do you office there, too! A. Yes.
- Q. Do you, like the other areas, conduct sales meetings with your salesmen? A. Will you repeat the question?
- Q. Yes. Do you conduct sales meetings with your salesmen? A. I do.
- Q. Do your salesmen have meetings with dealers in your territory? A. They do.
- Q. And do they also meet with rubber company representatives from time to time? A. Yes, sir; at times.
- Q. Do they have these dealer meetings together with rubber (3996) company representatives from time to time! A. Not necessarily; no, sir.
- Q. Do they have them ever? A. At times we have had some rubber company personnel to attend our meetings.
- Q. Is it your testimony then that sometimes you have meetings without rubber company representatives? A. Yes.
- Q. Do your salesmen have any responsibility or authority to recommend or cause the transfer as a promotion or demotion of an operator? A. Yes, they do. They have the authority to recommend to me that we not continue a lease with a dealer.
- Q. And who makes the final determination as to whether or not the lease should not be continued? A. That is made in the division office by the assistant division manager in charge of sales promotion.
  - Q. Who is he? A. Mr. W. H. Griffin, Jr.
- Q. Do you also receive recommendations for improvements about the station? A. Yes, sir.
- Q. And are these improvements made or refused strictly on your authority, or does that go higher up? A. No, sir. I have a certain authority and then if a (3997) certain expenditure is necessary I have to get authority from our division office personnel.

#### C. T. Fitts, for Commission-Direct

- Q. How do you rate your salesmen's performance? A. Well, there are a number of ways that we rate a salesman's performance. We do not have any forms that we fill out regarding a salesman's performance. But we consider primarily his activity, his interest, his initiative, and his ability to work and help the dealers to be better merchants, and that is especially true with the merchandising man.
- Q. How often do you have sales meetings? A. We have sales meetings three times weekly, on Tuesday, Thursday, and Saturday.
- Q. Is the purpose of that to review the records, to find out how they are doing in sales? A. Well, we cover a lot of things at those sales meetings. In fact, if we get a policy letter we sit down and read the policy letter to the salesman and we discuss it thoroughly to see that they understand the Texas Company's policy.
- Q. Do your salesmen receive a bonus on lubricating oils and that type thing? A. Yes. All salesmen receive a bonus on lubricating oils, providing that they have an increase in their sales over the previous year, and it is divided in two periods: The first six months and the last six months.
- Q. Do you receive your bonus based on those increased (3998) sales, too? A. Yes, I do. I receive my bonus the same as the general salesman. I do not receive any bonus on gasoline.
- Q. Do some of your salesmen receive a bonus on gasoline? A. Merchandising, yes.
- Q. Isn't it true that when you rate a salesman you go over his sales, that is, as to gasoline and— A. That is taken into consideration; yes, sir.
- Q. And isn't it true that also included in that is his TBA production; that is, the purchases of TBA by the sta-

#### C. T. Fitts, for Commission—Direct

tions which he is responsible for? A. I wouldn't say that is true because we do not have records of all purchases of TBA by our service stations.

Q. But you do have a record of their TBA purchases of the sponsored brands, do you not? A. Yes, sir; we do.

- Q. What happens when the station's volume declines? When TBA volume declines? A. We only urge a dealer—we realize in the service station business this day and time you have to do something in there besides sell gasoline if you are to make a living to pay you for your time and investment that you have. We encourage the dealer to handle a full line of TBA and we work with him and help him merchandise his TBA.
- Q. You take it up with the salesman? Indicating that a (3999) customer's purchases of TBA have declined? A. In all probability I will ask the salesman is there any way we can assist the dealer to help him make more profits from TBA. Yes. We work with our dealers very closely in an effort to get them to make the most out of their investment and time.

Q. How often do you have that type of meeting where TBA purchases are involved? A. We do not have any meetings on TBA purchases.

Q. I say where they may be involved. Is it once a month? A. It would only be where the—where we do not have any set times for meetings. I don't know of any meeting we have had recently regarding TBA at all or where discussion was made of TBA. It is just in isolated cases where maybe a dealer's profits have gone down and we are having a hard time, or he is having a hard time buying petroleum products or making the necessary money out of that station to justify his time and investment.

Q. Isn't there— A. We give him special attention and try to help him.

#### C. T. Fitts, for Commission-Direct

Q. Isn't there some period during the year that you have a special sales meeting with your salesmen for the purpose of going over and reviewing their records of production in order to determine whether or not they are carrying their load? Don't you have meetings of that sort? (4000) A. Do you mean from an over-all standpoint?

Q. Yes, over-all; performance. A. Oh, sure. We do

that quite often.

Q. How often is that? A. We don't have any set time to review them. We might review them two or three times a month. We keep a daily sales record on gasoline and oil.

Q. Isn't it at that type meeting that you go over with each salesman his deficiencies, for example, slipping on his quota or one thing or another? A. Yes, we have an objective on gasoline and oil. We sure do.

Q. Isn't it at that time, too, that you point out that the TBA purchases of his customers are lagging behind last year or have increased? A. No, sir, we do not. I cannot remember any time that we have sat down and talked about TBA, regarding purchases.

Q. Not specifically? A. We do not know what the

dealer purchases in TBA, a total.

Q. Didn't you testify before that that is certainly part of the salesman's duty, to promote these two rubber com-

panies? A. It surely is.

Q. Then how can you tell whether or not your salesmen are performing their duties unless you check on them? A. The salesmen report that individually to me and we sit (4001) down and try to figure out some way that we can help the dealer. And we make certain suggestions to the dealer how he can improve his TBA sales.

Q. How often does the salesman report that sort of thing to you? A. Just when he has a problem. There is not any definite report in time. Just when he has an in-

dividual problem.

#### C. T. Fitts, for Commission-Cross

Q. What sort of problem would you talk about? Declining sales? A. We might have a dealer that is not making the necessary money out of his investment and time in order to keep a good stock of petroleum products, or he might be giving us a bad check and we could determine it from that. Of course in the visits to the service station the salesman probably could determine then the amount of TBA or how active he was, or how successful he was.

Q. Do you predicate TBA sales on the gallonage, or do you predicate gallonage on TBA sales? Which comes first? A. Well, I don't think that we predicate sales in that respect whatsoever.

Q. You have some yardstick? A. We have a yardstick

to go by, yes.

Q. What is it? A. As I say again, we do not know how much TBA the dealer is selling. We do not have any records.

(4002) Q. At that rate then you don't know whether he is selling Goodrich or — A. Sure we know whether he is selling Goodrich or not, but he is probably selling Goodrich and some other merchandise that he buys from other suppliers.

Q. And you don't know how much from the other sup-

pliers? A. No, sir.

# Cross-examination by Mr. Lorenzen:

Q. Is that yardstick that Mr. Dias talked to you about, the same thing that we have had referred to heretofore as a profit computer? A. That is right; yes.

Q. That is some sort of a slide rule type of thing? A.

That is right.

Q. That is made up by some research organization? A. Chek-Chart; yes, sir.

#### C. T. Fitts, for Commission—Cross

Q. It is nothing that the Texas Company makes up? A. No, sir.

Q. It is distributed by the Texas Company to its dealers

as a service to them? A. That is right; yes, sir.

Q. In connection with these salesmen's meetings at which you say you discuss the policies of the company, do you (4003) discuss the policy letters with respect to the TBA program? A. We do.

Q. Of the Texas Company? A. We do.

Q. Let me ask you whether you ever received a copy of a letter having the identical subject matter as Exhibit 26-D and E for identification? A. Yes, I remember this letter very well, especially the next to the last paragraph on the second page.

Mr. Dias: I object. It is in the letter. It is in the letter. When they are ready to put it in it will be in evidence.

#### By Mr Lorenzen:

. Q. You do remember that letter? A. Yes.

Q. You received that before you became zone manager? A. Yes. I was dealer service representative when I received that letter.

Q. I show you Exhibit 27-A through D and ask you whether you received a letter which contained the same subject matter as that part of the letter which is in quotation marks? A. I did not receive this letter.

Q. What is the date of this letter? A. February 25,

1952.

Mr. Lorenzen: May I have this exhibit marked (4004) for identification?

(The document referred to was marked Respondents' Exhibit 30-A through C for identification.)

#### C. T. Fitts, for Commission—Cross

#### By Mr. Lorenzen:

Q. I show you a document which has been marked as 30-A through C for identification and ask you whether you received a copy of that letter in your capacity as zone manager? A. I did receive this letter.

Q. Is that one of the policy letters which you testified

you discussed with the salesmen? A. It is.

(4005) Q. I ask you whether the document which has been marked as 31-A through E for identification is a copy of a letter which you received in your capacity as zone manager? A. I did receive this letter.

Q. Is that one of the letters which you discussed with your salesmen at the salesmen's meetings about which you have testified? A. Yes, we discuss all policy matters at

our meetings.

Q. That includes that particular letter? A. Yes.

Q. I show you the document which has been marked 32-A through C and ask you whether that is one of the policy letters of the company which you received as zone manager? A. I did receive that letter.

Q. Is that one of the letters which you discussed with the salesmen at the salesmen's meetings? (4006) A. It

was.

Q. You testified that you had some meetings with dealers, also? A. Well, those meetings are primarily held by our salesmen. We do have, the zone has meetings with their dealers, yes.

Q. Don't you yourself personally have meetings with new dealers before they are selected to become dealers? A.

I do.

#### C. T. Fitts, for Commission-Cross

- Q. Do you have any discussion with them, called I think "indoctrination," the general language that is used by the Texas Company! A. Yes, sir.
- Q. You have such indoctrination talks with them? A. Yes, sir.
  - Q. Are you there when that happens? A. Yes, sir.
  - Q. Do you discuss TBA with them? A. We surely do.
- Q. Will you state whether or not that discussion is held in conformity with the policy letters which you have just identified? A. It is.
- Q. Can you recall any case which you did not follow the company's policy with respect to the TBA and the independence of the dealer in connection with your discussions with the (4007) dealers, as long as you were zone manager? A. I cannot.
- Q. You testified that salesmen can make recommendations to you about termination of a lease? A. Yes, sir.
  - Q. That is, non-renewal of a lease! A. Yes.
- Q. Will you tell me how many times since you have been zone manager, from 1952 down to date, you have had occasion to check-out a dealer as the result of the nonrenewal of his lease by the Texas Company? A. One time.
  - Q. When was that? A. That was January 11, 1957.
  - Q. Just a few days ago! A. Yes, sir.
- Q. Will you tell me whether or not that non-renewal had any relation to the dealer's purchasing or not purchasing of sponsored TBA? A. It did not.
- Q. That non-renewal had no connection directly or indirectly with TBA? A. It did not.
- Q. From time to time during the years when you have been zone manager, dealers have left their dealerships in their (4008) station, have they not? A. They have.
- Q. That is sometimes before the expiration of the lease? A. Yes, sir.
- Q. And you consented to it? The Texas Company consented to their leaving? A. Yes.

#### Donald E. LaGarde, for Commission—Direct

(4009). DONALD E. LA GARDE was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

# Direct examination by Mr. Dias:

Q. State your full name and title for the record. A. Donald E. LaGarde. Since January 1, 1957, I am zone manager of Atlanta. Prior to that I was Atlanta district manager. The lines of authority between the two are similar. That is, the responsibilities that I had in 1956 as district manager are similar to the responsibilities which I have as zone manager.

Q. Goodrich had a reorganization too? What is it now? Give us the chain of authority here and your responsibilities prior to 1956, and how they have been changed. A.

Prior to 1956 or '571'

Q. Prior to 1957. A. There is no change in responsibility. I am responsible—I was responsible in 1956 for the distribution of B. F. Goodrich products through dealers and stores within the Atlanta district. I have now become responsible for the distribution of B. F. Goodrich products within the Atlanta zone.

(4011) Q. I believe you have some statistics for me, have you? Or are you going to read them into the record. The names and addresses of all Goodrich stores. A. Within the metropolitan area of Atlanta?

Q. I suppose; yes. A. We have three stores within the metropolitan area of Atlanta. The Atlanta store, located at Courtland and Auburn Streets, and the Decatur store at 140 Claremont Road, in Decatur; and the East Point, Georgia, store is on Church Street. I don't recall the number.

#### Donald E. LaGarde, for Commission-Direct

- Q. Is that here in Atlanta? A. That is in East Point, part of metropolitan Atlanta, in Fulton County, in which Atlanta is also located.
- Q. Do you have the name and address of all your Goodrich distributors, the independent distributors? A. We have no distributors that solicit service station or (4012) dealer business in the metropolitan area. Our store performs that function. Two stores.
- Q. Which two? A. Atlanta, Georgia, store, Courtland and Auburn Streets; and Decatur, Georgia, store, 140 Claremont Road.
- Q. How do these Goodrich stores operate as a supply point? What is the procedure? A. The procedure is for us to designate one of our employees working within those two stores to solicit service station (4013) business within their given area; to promote the sale of our merchandise through other dealers, smaller dealers within the area which is assigned to them.
- Q. What was the latter! Through smaller dealers?

  A. To solicit business through smaller dealers.
- Q. Such as what? Do you mean service stations? A. Service stations, car dealers.
- Q. Where do these stores get their supplies? Do they get them from the master warehouse? A. From the master warehouse,
- Q. Do you receive notice from Texaco when a new station is opening up or a station changing operators? Do you receive advance notice? A. No, sir.
- Q. Do your supply points receive that information?

  A. To the best of my knowledge they don't, no, sir.
- Q. Do you go out and just find the business? Is that the idea? A. In the great majority of cases we do, yes.

#### Donald E. LaGarde, for Commission—Cross

Q. At what point does Texas submit the name of a station to you for approval? You don't sell to every service station, do you? A. No.

Q. Nor do you sell to every Texaco station? A. That's

right.

- (4014) Q. At what point does Texas identify a new station or a change of operator so that you can determine whether or not you want to sell to him? A. Well, they don't as a rule identify that information to us. We have to pretty much seek that information out to the best of our ability.
- Q. They are not much help are they? A. Well, they are very much help when we sell the account. Exceedingly so.
- Q. Do you home office—when I say home office I mean salesmen out of your office—you have salesmen in your office? A. Yes.
  - Q. Do they call on Texaco stations, too! A. Yes.
- Q. And also your stores, your supply point stores call on the stations? A. Yes.

#### Cross examination by Mr. Barton:

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- Q. Mr. LaGarde, I think Mr. Dias was asking you about how the B. F. Goodrick Company obtains information as to the names of operators of new Texas service stations in this area. I would (4015) like for you to explain the details of how you obtained the names of the last seven Texas service stations who signed up with B. F. Goodrich in 1956 and '57? A. That is in the metropolitan area of Atlanta?
- Q. In the metropolitan area of Atlanta. A. Our salesman at the Atlanta store is an example. In his daily rounds of being aggressive, attempting to improve our distribu-

#### Donald E. LaGarde, for Commission-Cross

tion in the market, he would recognize that a new service station is being built and quite often would determine from the physical appearance of the building that it will be a Texaco, in certain instances, and he begins to try to determine who is going to be the operator of that station.

I can recall an instance where a service station out on the Covington Highway—Reagan—R-e-a-g-a-n, to the best of my knowledge—who was a personal friend of a Texas—B. F. Goodrich dealer by the name of Harold Gully, and J. V. Andrews, and we feel that the success that those two B. F. Goodrich-Texaco dealers were having, and their recommendation to this dealer, had an awful lot to do with our selling him B. F. Goodrich merchandise, and because of that interest developing he contacted our store.

Q. Who contacted your store? A. I think that our salesman in this instance notified our store in Decatur-that this party was going to operate this station on Claremont Road. It developed later that he knew (4016) our store manager.

Q. Mr. Reagan knew your store manager? A. Yes. In that particular instance that helped to sell our account on B. F. Goodrich.

Another one I can think of not too far from that particular area has to do with a Parker Service Station on South Church in Decatur. He was a friend again of Harold Gully, a Texas-B. F. Goodrich dealer. Gully told our salesman at the Atlanta store about this new operator, and therefore our salesman, James Matthews, notified our salesman in the Decatur store, and that is how the contact was made.

I have another case in mind. The name of the account is Dobbs, located on North Decatur Road. Mr. Dobbs was a former B. F. Goodrich employee and left us sometime at the start of World War II. He was engaged in some business that I am not familiar with, but in his contacts

#### Donald E. LaGarde, for Commission-Cross

in this business that he was working with, he called on a former employee of our Decatur store, a man by the name of Shepard, and notified him that he was going to operate the Texas station on North Decatur Road, and we learned of that new operator from that source.

Another case I can think of has to do with a Texas dealer by the name of T. O. Gresham. Mr. Gresham was associated with his brother, Ed Gresham, on Moreland Avenue, Southeast. Texas was building a new service station and we found out through T. O. Gresham that he was going to be the operator of that (4017) station, and working with his brother, Ed Gresham, handling B. F. Goodrich and Texas for several years, it was a known quantity that he wanted to handle B. F. Goodrich.

Then we had a case of Harper. I think that was on Garden Road. In that particular instance I can recall from the information that definitely was given me that the Texas Company contacted our salesman at the Atlanta store and notified him that he expressed a preference for B. F. Goodrich.

Another case I have in mind that has to do with a man by the name of Bond, who would soon operate a Texas station on the corner of Hemp Hill Avenue and North— North Avenue and Hemp Hill. He was a personal friend of a very fine Texas B. F. Goodrich dealer by the name of L. C. Smith, who is located on Northside and Bishop.

"L. C." has been a very fine B. F. Goodrich dealer and a very loyal B. F. Goodrich dealer and has expressed his appreciation for the fine assistance that we have rendered him in the development of the TBA business, and he spoke very kindly toward Mr. Bond about this association, which enabled us to contact him and review the opportunities that he would have with the B. F. Goodrich franchise.

Q. Do you recall a dealer, an additional dealer who opened up in that period, since January 1st, and took on

#### Donald E. LaGarde, for Commission-Cross

the line, by the name of Hall, on Campbelton Road, whose station was originally opened, I believe, by Garland Holland? (4018) A. Yes. Garland Holland was a customer of Strickland in East Point, Georgia, the Strickland Service Station in East Point, Georgia. Our salesman, Jim Matthews, was in the station—Strickland's station in East Point—when this gentleman came in and he was introduced to Jim Matthews. Jim was advised that he would be an operator of this station on Campbelton Road. That is how the contact was made there.

Q. That was in February, 1956? A. Yes, sir.

Q. Is it correct that the total number of Texas dealers obtained for Goodrich among these new stations since January 1, 1956, is seven? A. That's right.

Q. In other words, these are the seven dealers that-

A. Texas stations that B. F. Goodrich sold in 1956.

Q. These are the same seven that you have talked about in your testimony today? A. That's right.

(4019) Q. Mr. LaGarde, in connection with the socalled, what counsel likes to call nomination by Texas of a Texas account to Goodrich, and approval by Goodrich, and which I think our form provides the word "notification" rather than "nomination," when does that take place with respect to one of these new Texas stations which becomes a Goodrich dealer? A. Anywhere from two weeks to two months after the account has been sold B. F. Goodrich.

Q. In other words, the account is sold by B. F. Goodrich to take the Goodrich franchise and then sometime after the station is opened and he is handling Goodrich a form comes through from the Texas Company to the Goodrich office? A. Right.

Q. With the name of that dealer on it, and indicating that he is handling Goodrich products, and at that time you approve that form? Is that right? A. That is right.

## Donald E. LaGarde, for Commission-Cross

Q. Have you ever disapproved one during the course of your period as district manager in Atlanta? A. I can't recall of ever disapproving any.

Q. You told Mr. Dias that in connection with obtaining the Texas station as a customer you do not receive assistance except on some occasions from the Texas Company. But in connection with their activities after that you receive very great assistance? (4020) A. That is right.

Q. Will you detail what that assistance comprises? A. After we are able to sell a Texas operator B. F. Goodrich products, where he becomes a retail marketer of those products, we sense immediately that Texas is extremely interested in the sale of TBA merchandise through their stations and we feel that through their contacts with their service stations, which are quite often, they are able to do an awful lot—of rendering us an awful lot of help in securing cooperation from the dealer in fostering merchandising programs that we might suggest or whenever we want to hold a dealer meeting to give him a product story or merchandising discussion.

It emphasizes that fact, that they are extremely interested in rendering service to that operator, to improve his over-all volume through TBA. We sense that without any doubt. And they do give us any assistance that we ask for.

(4021) KELLER F. MELTON was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

## Direct examination by Mr. Boyd:

- Q. Mr. Melton, will you give us your full name? A. Keller F. Melton.
- Q. With what business are you connected? A. I am with the Georgia Association of Petroleum Retailers.
  - Q. Is that commonly called GAPR? A. Yes, sir.
- Q. What is your position with GAPR? A. Field Director.
- Q. How long have you been with the GAPR? A. A little over five years.
  - Q. In the same position? A. In the same position.
- Q. Would you tell us what the business of the GAPR is?

  A. The purpose of the organization is to try and stimulate better economic foundation and better working conditions; to try to create in general a more healthy retail service station business.
- Q. When was the organization formed? A. In 1941 it was chartered as a state organization.
- (4022) Q. What are the requirements of membership? A. The requirements of membership, as they are stated, the members try to uphold the principles of the local chapters in that we tend to try to make a livable margin of profit and try to discourage such things as premium-type give-aways, discounts, and any type operation that will tend to create an unhealthy operation.
- Q. Could you give us some idea about your membership in the State of Georgia, and in the Atlanta area? A. The membership runs somewhere in the neighborhood of 3600 members in the State of Georgia; in the Atlanta area it runs about 500.

Q. Do you have any idea as to the percentage of membership as compared to the number of service stations in the State of Georgia? A. It runs just about 80 percent in connection with the major brand stations who we primarily contact.

Q. When you say "major brands," will you define that for us? A. That would be Standard, Gulf, Texaco, Sinclair, Cities Service, Phillips and so forth.

Q. Do you have any idea as to how Texaco ranks in size in the State of Georgia? A. According to their report on tax to the state it would rank somewhere about fourth.

Q. What is this report that you refer to? (4023) A. That is the report on the amount of tax that they turn into the state.

Q. And it is based on what? A. In other words, you figure your gallons from the amount of tax that they turn in.

Q. Do you have any idea as to how many, approximately how many Texaco dealers there are in Georgia? A. That would be something that Texaco could give you the exact answer on. I would approximate about 800 if that would include all type pumps, exclusive of bay stations and so forth.

Q. Would you tell us what your duties and responsibilities are as a field director with the GAPR? A. We have about 30 chapters over the state. In my territory there are approximately ten.

Q. Tell us what your territory is? A. It would be a radius of approximately 100 miles out of Atlanta, to the Alabama line, to Columbus, as far as Cedartown and Alpharetta.

Q. Will you finish your description of your duties? A. We handle complaints from dealers, whether it be on price discrimination, lease cancellation—unfair lease cancella-

tion, I might add—TBA pressure. In the case of the unfair lease cancellation we attempt to find out the trouble in this and possibly either go to the company or take (4024) various other courses to try to find out why this lease was cancelled.

And then in the course of the TBA pressure and price discrimination we get up these various facts, report it to the various government agencies for their consideration.

Q. Does your work include direct contact with dealers?

A. Yes, sir.

Q. Would you explain the nature of that? A. Of course in having our meetings we contact as many dealers in person as possible.

(4025) Q. Mr. Melton, do the members of GAPR file complaints with you—with the organization? A. Yes, they do file complaints.

Q. Do you have occasion to check into such complaints?

A. Yes, sir. I sure do.

Q. Have you had occasion where dealers have registered complaints with your organization with respect to TBA? A. Yes, sir:

Mr. Barton: Objection.

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. Yes, we do.

#### By Mr. Boyd:

Q. Will you tell us generally the nature of such complaints?

Mr. Barton: Objection. Mr. Royall: Objection.

#### JA 1156

## Keller F. Melton, for Commission-Direct

(4026) Hearing Examiner Kolb: Objection overruled.

A. The nature of the complaint is the fact that they do not receive direct pressure from the oil companies to handle a given line of TBA; •••

#### By Mr. Boyd:

Q. Mr. Melton, have such discussions included with respect to the handling of TBA the matter of lease non-renewal? Things of that nature?

(4027) A. The complaints do involve lease cancellation.

(4028) Q. In your territory, which you described as a hundred mile radius of Atlanta, do you have any idea how many service stations are in that area, of all kinds? A. I would say about 4,000, the latest count.

Q. This is just your territory? A. That is right. That is all type outlets. There are some we don't consider cligible for membership in GAPR due (4029) to lack of volume.

Q. What type operation would that be? A. A grocery store with one pump possibly or two pumps that have very, very small volume.

Q. Do you have any idea about the approximate number of Texaco stations in your area? A. I couldn't give you the exact figure. I would say somewhere in the neighborhood of 300 to 400, probably more.

Q. What about the number of Texas stations that are members of the GAPR? A. It would be about 150.

Q. Do you know about how many of those would be leased stations as contrasted to independent stations?

Mr. Royall: Objection. Hearing Examiner Kolb: Overruled.

A. That would be hard to give a figure. It would just have to be approximated. Of course you have your independents who come into it, where they have all their—as a rule—all their own places, and you have independent chains including in that. I would say in the whole category it would probably be dominated by 60 percent of companyowned leased property.

## (4030) By Mr. Boyd:

- Q. Mr. Melton, do you call on the Texaco stations in your area that are members as well as non-members? A. Yes.
- Q. What is usually the purpose of the calls on the members?

Mr. Royall: Objection. Hearing Examiner Kolb: Overruled.

A. Well, of course if we receive any complaints, that is one basis for calling on the members.

Q. Any others? A. And of course there again you have your meeting, you have various other reasons such as your "C" type operations where they cut the price in that location; where the company tries to get the operator to stay open longer than a station warrants; where the company tries to persuade dealers to take on lines that are disadvantageous to the dealer, such as premium stamps. There again you get back into of course your insistence on handling their controlled line of products.

(4031) Q. In your calls on these stations, Mr. Melton, have you observed the line of tires and batteries that are carried in Texaco stations? A. Yes, sir.

Q. What brand or brands have you observed in most

Texaco stations?

Mr. Barton: Object. Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

## By Mr. Dias:

Q. You may answer. A. If I might qualify that by saying in the company-owned property it is predominantly either B. F. Goodrich or Firestone.

(4033) Q. In your travels what have you noticed with reference to stations other than company-owned or leased stations?

Mr. Royall: Objection. Hearing Examiner Kolb: Overruled.

A. Well, I would say, from calling on these stations and noticing this pretty closely, that they would have a field (4034) of taking in every or nearly every time that is made, and not tied down to any one or two specific tires.

Mr. Royall: Motion to strike on the grounds previously stated in the other question, unless your Honor wants me to repeat it.

Hearing Examiner Kolb: Motion denied.

#### By Mr. Boyd.

Q. What about batteries?

Mr. Royall: Objection. Hearing Examiner Kolb: Overruled.

A. The same with batteries.

#### By Mr. Boyd:

Q. Mr. Melton, have any of the Texaco operators ever discussed with you the brand of TBA they handle?

Mr. Barton: Object. Mr. Royall: Objection.

Mr. Boyd: I am coming to the specific part now. Hearing Examiner Kolb: Objection overruled. The witness may answer, Yes, or No.

A. Will you repeat the question?

(Question read.)
Mr. Royall: Objection.

A. Yes.

#### By Mr. Boyd:

Q. re you familiar with some instances? (4035) . A. Yes.

Q. Will you name some for us? A. Well, we can go back a number of years to the station out here at Piedmont and 10th Street.

(4053) Hearing Examiner Kolb: Mr. Melton, as an officer of the Association, have you received complaints from your various members of your Association?

The Witness: Yes, sir.

Hearing Examiner Kolb: In the past three years about how many complaints have you received?

The Witness: This question of TBA-

Hearing Examiner Kolb: Just answer my question. How many complaints have you received in the past three years?

"The Witness: I would say somewhere over 150.

Hearing Examiner Kolb: How many of those complaints involved TBA?

The Witness: I would say the majority of them.

Hearing Examiner Kolb: Did you do anything about taking it up with the companies in connection with the complaint?

The Witness: Yes, sir.

Hearing Examiner Kolb: Did you take any of it up with Texaco?

The Witness: No, sir.

(4055) HARVEY G. TALLEY was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

## Direct examination by Mr. Boyd:

- Q. Mr. Talley, will you give us your full name please?
  A. Harvey G. Talley.
- Q. What is your home address? A. 83 Dartmouth Avenue, Avondale Estates, Georgia.
- Q. Have you ever been in the service station business?
  A. Yes.
  - Q. With what company! A. The Texas Company.
  - Q. Would you detail for us when you were in the service station business for the Texas Company? A. At the beginning?
  - Q. Yes. A. I first became a dealer with the Texas Company June 6, 1938.

Q. Where was this station located? A. 718 Ponce de Leon Avenue, Atlanta, Georgia.

(4056) Q. How long did you continue as a lessee of the Texas Company? A. Until September 5, 1951.

Q. Had you been connected with this station before you became the lessee there? A. Yes, sir.

Q. In what capacity? A. In 1932, about June, 1932, I went there to train, to take a job on the road for the Texas Company.

Q. And after that? A. I remained there until the latter part of '33 at which time I took a territory known as the Gainesville territory, Gainesville, Georgia, territory, in the capacity of service station supervisor.

After having been there a short while my territory was combined with another territory and I returned to 718 Ponce de Leon Avenue.

- Q. What did you do there? A. I still was a trainee, to go on the road in the capacity of a service station supervisor.
- Q. And that was when? A. That was the latter part of 1933.
- Q. Bring us on up from there to when you became the lessee of that station. A. Later, I believe the first of 1934, I was moved to (4057) Greeneville, South Carolina, to operate a training station for the Texas Company. That lasted for three or four months.

Then I succeeded Mr. T. O. Andrew as service station supervisor of the western half of South Carolina, with headquarters in Greenville, South Carolina.

Q. That continued to when? A. That continued through December, 1936. As of January 1, 1937, I was brought back to the same point, 718 Ponce de Leon Avenue, and made manager of the station.

I remained manager of the station until I became lessee June 6, 1938.

Q. Who were you managing the station for, from 1936 to '38? A. From 1936 to 1938 for the Texas Company. I was a salaried employee.

Q. While you were a lessee of that station—when you became a lessee, did that station have any TBA? Line of

TBA! A. Yes. We handled Firestone.

Q. At that time was there any other line of TBA in the station?

(4058) Q. Other than Firestone? A. No. Not in the station.

- Q. That would include tires? Firestone tires? A. Yes, sir.
  - Q. Batteries! A. Yes.

Q. And accessories? A. That's right.

- Q. After you became the lessee did you continue to carry the Firestone line? A. Yes, I did.
- Q. How long did you carry the Firestone line? A. During the whole time of my stay there.
- Q. Did you ever carry any unsponsored TBA? (4059)
  A. Yes.
- Q. Will you tell us when it was and what it was you carried! A. During the war—of course all merchandise was short—we endeavored to secure merchandise to sell from any place available.

Q. Is this World War II you are talking about? A. That's right.

Q. Go ahead. A. I had done some business with Gordy Tire Company, distributors of Dayton tires. I had done some business with them and it was through them that I was able to get, during the war, tires—not enough, but tires to sell to my customers.

Firestone was unable to supply me. Of course, I appreciate that they were rationed, as everything else was. But

I was able to get more tires from Gordy than I was from Firestone. Therefore, I was selling them right along.

Q. After World War II what was the situation? A. After the War, of course, it was a good while before merchandise became plentiful, as we all know. But I continued to handle Dayton tires as well as Firestone. And as Firestone became available, I handled more and more. But I still had Dayton tires in stock, and sold them right along.

Q. Did any representatives of the Texas Company ever say anything about your handling the Dayton tires? A.

Yes.

(4060) Q. About when was it that he said something to you, and who was it? A. It was, I believe, about 1945, and I believe the representative of the Texas Company was Mr. Strickland.

Q. What did he say to you about Dayton tires?

Mr. Royall: I know you gave me a continuing objection. Since this is not historical, I wish your Honor would consider it.

Hearing Examiner Kolb: I understand the testimony this man might give extends to September, 1951. Your objection is as to any evidence prior to 1952. That will be overruled. Read the question. (Question read.)

A. He requested that I at first—he saw that I had an ample stock on hand—he requested that I not display them out front, which I did.

## By Mr. Boyd:

Q. What did you do with them? A. I put them in my back room, in the back office, in the storeroom.

Q. What else did he say? A. Later on he requested that I do away with them, sell them as quickly as possible.

Then he came to the point where he requested that I do away with them entirely.

(4061) Q. When you put the Dayton tires in the back room did you have any tires out front? A. Yes.

Q. What were they? A. Firestone.

Q. What about batteries, Mr. Talley? Did you ever carry any unsponsored batteries? A. Yes. I carried Willard batteries, and Southern batteries, along with Firestone.

Q. When did you do this? When did you carry the unsponsored batteries? Willard and Southern? A. During that same period of time.

Q. This is World War II you are talking about? A. And

after.

- Q. Did any representative of the Texas Company ever say anything about the Southern battery and the Willard battery? A. They didn't have as much to say about that as they had to say about the tires.
- Q. Did you finally get rid of the Dayton tires? A. Yes, sir.
- Q. After that did you carry any tires other than Firestone? A. No, sir.
- Q. Until the time your lease—until the end of the term of your lease? A. That is correct.

(4062) Q. September, 1951? A. That is correct?

Q. What about batteries? Did you carry any other brands? A. Yes. I continued to handle Southern batteries and a few Willard right along.

Q. Did you carry those openly in the station? A. Yes.

- Q. What, if anything, was said about them? A. I don't remember. No more than had already been said.
- Q. What—would it be Mr. Strickland there? A. I don't remember. No, I think Mr. Strickland moved on to another territory, and I have forgotten who succeeded him.
- Q. But something was said by the people of the Texas Company? A. That's right.

Mr. Royall: We object on the additional ground that who said it is not identified.

Hearing Examiner Kolb: Objection overruled.

The answer may stand.

## By Mr. Boyd:

- Q. Mr. Talley, during the last year of your tenure as a lessee of that station, do you recall about what your average TBA volume was a month? A. About a thousand to \$1,500 a month.
- Q. How long did that prevail, at the rate of a thousand to \$1,500 a month? (4063) A. That would be hard to say. It had grown from you might say little or nothing, a very small volume prior to the war, and I did my biggest tire business after the war.

Q. World War II! A. After World War II, yes.

- Q. What about the gasoline gallonage? How did that run from the timesyou went in until you left? A. I won't attempt to—
- Q. Approximately? A. I will approximate it at 35,000 average. The most I ever did was slightly under 40,000 gallons in one month.

Q. You figure it averaged 35,000? A. From 32 to 35,000. That's right.

Q. Mr. Talley, from what source did you acquire the Firestone tires, batteries and accessories that were handled at that station? A. From the Firestone Tire and Rubber Company at their warehouse on Lindbergh Drive.

Q. Here in Atlanta? A. Here in Atlanta.

- Q. During the whole period? A. That is correct.
- Q. Were you told by any representative of the Texas Company to acquire the Firestone TBA there? A. No, I wasn't. In the beginning of my lease?

(4064) Q. Yes. A. No.

Q. How did you know to go there? A. Oh, to that point of supply?

Well, that is where all Firestone dealers buy from. They don't necessarily buy from a store. They can. I

always bought direct.

Q. Mr. Talley, when did you first learn that your lease on that station would not be renewed! And where! A. In 1951, I believe the last of August—I mean the last of July or the first of August, that part; I can't be sure—while I was on vacation for a couple of weeks, I had this friend of mine who did auditing work to come in and compile figures on a third shift that I was running—24 hours. I knew that I was losing money, and I had him come in and go through the whole period that I had been staying open, which was a 8-month period.

Q. You had been staying open a 24-hour period for 8 months? A. That's right. I was not open then. But he

got these figures—

Q. Excuse me. What was the reason for running the station 24 hours?

(4065) A. I was requested to do so.

Q. By whom? A. The Texas Company.

Q. Go ahead. A. This man having gotten those figures for me, and the did them carefully and diligently, it showed that I had incurred a loss of a thousand dollars the last eight months kept it open.

Q. You mean kept it open a third 8-hour shift? A. That's right. When I say kept it open, I mean all night. I still can't recall the man's name that I went to see, at

the Texas Company.

Q. Where was he, that you went to see him? A. Atlanta.

Q. At what company? The Texas Company? A. The Texas Company. I called up and asked for an appoint-

ment. I was going to ask him to look at those figures because they were wanting me to get back to staying open all night again, and I wanted him to see the figures that showed the loss that I had incurred. And he gave me the appointment graciously.

I went up to see him. When I went into his office he thought that I had learned that they weren't going to re-

new my lease.

(4066) Q. Did he tell you that? Whoever this man is? A. I don't believe he did.

Q. How do you know that he thought that then? A. Because he said, "It is too bad, Talley, I am sorry that things are going like they had to go." Words to that effect. Those are not his exact words. But that is how I knew something was in the wind other than what I had come up there to see him about."

Q. At this time had you received any notification from the Texas Company? A. No.

Q. That the lease was not going to be renewed? A. No, sir.

Q. That is the first you heard of it? A. Yes.

Q. And you can't remember that man's name? A. No, sir. I can't to save my life.

Q. It was at the Texas Company? A. Yes, sir.

Q. He told you he was sorry. What else was said there? A. I mentioned the fact that I had come to show him these figures, showing the loss that I had incurred, and I guess that there was no need for him to see them then, and he agreed.

Q. Did he say, at that time, anything about there having gotten another operator for the station? (4067) A.

I don't recall.

Q. Thereafter did you receive notification of non-renewal of the lease? A. In due time, yes, which was 30 days prior to the expiration of my lease, or the anniversary of it.

## Harvey G. Talley, for Commission-Cross

Q. At the end of that term did you leave the station?
A. I did.

Q. Mr. Talley, what reason was given you, if any, by the Texas Company, for the non-renewal of that lease? A. Well, to quote Mr. John Green, who was then assistant district manager I believe in charge of sales, he told me, he said, "Talley, we think a lot of you. You have been with us a long time. You can have any station we have got that is available but that one. 'It is going to be kept open all night and you don't want to keep it open all night."

Q. Then, is it your understanding that if you agreed to run it all night you could have kept the station? A. No, it was not my understanding at that time. It was too

late. Oh, prior to that?

Q. When did Mr. Green tell you this? A. That was, I believe, the same day, or maybe a few days following. I believe it may have been the same day.

Q. Same day of what? A. That I was in the Texas

Company office.

Q. And learned— (4068). A. Learned that a successor had been selected for that station.

Q. Other than that, no other reason was given to you?

A. That's right.

## (4069) Cross examination by Mr. Royall:

(4070) Q. Mr. Talley, this conversation that you had with Mr. Strickland back in 1945, as you recounted, what were the exact words he used to you? A. I can't give the exact words after so long a time.

Q. Can you give us any additional information about what he said, aside from what you have already given?

A. No. No. I think that was all.

# Harvey G. Talley, for Commission-Cross

- Q. Do you know where Mr. Strickland is now? A. He is in his room. He was.
  - Q. Here in the room? A. He was.
- Q. What position was he in when he talked to you? A. Salesman, I think the title was.
- Q: You said in connection with keeping open all night that you went to see a man whose name you do not recall?

  A. That is right.
- Q. What was his position at that time? A. If I remember correctly it was assistant district manager in charge of service stations.
- Q. You think that would give me enough information to identify him, do you? A. I believe. I am awfully sorry I don't recall his name.
- Q. As a matter of fact, in connection with the cancellation of your station, or at least the failure to renew it, you had had this discussion about staying open all night for a year (4071) or so before it was cancelled, hadn't you? A. Well, actually what took place, my lease had been renewed, we had personnel trouble. I have forgotten, I think it was about two months after my new lease had gone into effect. And I had this personnel trouble and was unable to get anyone satisfactory to run it at night, and I just had to close it down. I even found out later one of the men that I had had in there was selling whiskey all night. All such stuff as that.
- Q. As a matter of fact, Mr. Talley, it was not during your last year that that occurred. It was in the year before that, wasn't it? A. Maybe it was. Maybe it was.
- Q. And at that time you told them you would try to do better about it? A. Could be.
- Q. And for a short time you did keep open 24 hours, didn't you? A. That is right.
  - Q. And they renewed your lease? A. That is right.

# Harvey G. Talley, for Commission—Cross

Q. After they renewed the lease you got a letter from Mr. H. E. Horton, did you not? A. I don't recall.

Q. I am not trying to mislead you. I would like to see if you recognize this letter so that I can identify it

(handing)? (4072) A. Sure, I remember that.

Q. As a matter of fact, during the period you were not staying open all night the gallonage was a great deal less than it was when you later opened and stayed open all night again, wasn't it? A. It was some greater.

Q. Wasn't there a difference of 10,000 gallons a month between the two types of operations? A. I don't remem-

ber it being that much different.

Q. When you got a letter from Mr. Horton did you answer him? A. Of course I did.

Q. You wrote him a letter back in answer to this? A. He asked for a phone call, didn't he?

Q. You didn't wate him? A. I don't recall having written him.

(4073) Q. It is a fact, is it not, Mr. Talley, that after that letter was written that you again resumed the 24-hour operation for awhile until about the first part of 1951, and then you changed the basis again? A. That is correct.

Q. And when you changed back again to a lesser period than 24 hours the gallonage went off from three to five thousand gallons a month, didn't it? A. It must have. You have the figures there. I don't have.

Q. This is not a letter to you. I would be glad to let

you look at it. A. I will be happy to see it.

Q. This is for an earlier period (handing to the witness). I don't want to have this marked for identification because it is not competent evidence but I don't mind you seeing it.

# Harvey G. Talley, for Commission Cross

Mr. Boyd: Do you mind if I read it?

Mr. Royall: Not at all.

Mr. Boyd: Since the witness is seeing it I think it should be identified.

Mr. Royall: I didn't offer it. I didn't even ask him about the letter. It was a courtesy to him. If you don't want him to have it I will take it back.

## By Mr. Royall:

Q. Have you discussed this situation that you have testified about with anybody during this past Fall? (4074) A. With whom do you mean?

Q. I am asking you, sir! A. I don't recall having done

80

Q. Someone talked to you before you came up here as a witness, didn't they? A. Yes, sir.

Q. When is the first time that they talked to you? A.

Two or three weeks ago.

Q. You were subpoensed? A. Whatever time-

Q. Was it just before the subpoena? A. Just before the subpoena.

Q. How long before the subpoena? A. A week or two, I

guess. I don't remember exactly.

Q. You don't remember talking to anybody else prior tothat time, do you? A. No.

Q. Had you talked to anybody in the year before that about the matter? A. It is possible.

Q. You don't remember? A. No.

Q. You don't remember the year before that either, do you! A. No.

Mr. Royall: That is all I care to ask him. (4075) Mr. Barton: No questions. Mr. Boyd: May I see those two letters?

Mr. Royall: One of them is up there. This one is not offered in evidence and not made the basis of it.

## Redirect examination by Mr. Boyd:

Q. Having seen the second letter shown to you by counsel for the Texas Company, did that refresh your recollection as to who it was that you talked with at the Texas Company, this conversation where you are unable to identify the individual? A. Mr. Monroe.

Q. It was Mr. Monroe? A. Yes.

Mr. Boyd: I wonder if we could have his full name?

Mr. Royall: D. B. Monroe.

#### By Mr. Boyd:

Q. Mr. Talley, can you tell us when you first started staying open 24 hours a day in that station?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. I can't tell you exactly. But it was between 1938, the time I went in there, and '43. The reason why I say '43, I had a partner up until March 1943. He left me.

## (4076) By Mr. Boyd:

Q. Then did you operate it from 1943 to along in 1950— I believe the date of the first letter in May 3, 1950—24 hours a day? A. No, not continuously.

Q. How was it? A. I don't remember the dates or anything but gasoline shortage developed and they allowed me to close, and then World. War II came on and all of that. And then again I went back on 24 hours, and then again

a temporary gasoline shortage developed and they allowed me to close then to conserve the supply of gasoline for the area. The dates I don't have. I would like to say this—

Mr. Royall: Objection.

#### By Mr. Boyd:

Q. Do you have some explanation that you wish to make about the letters or about the 24-hot operation? A. Yes.

Mr. Royall: Objection.

#### By Mr. Boyd:

Q. Which is it about, the 24-hour operation?

Mr. Royall: Objection.

· Hearing Examiner Kolb: Overruled.

A. It is about the second letter.

#### (4077) By Mr. Boyd:

Q. All right, sir. Do you need the letter in front of you?

A. I would like to have it.

Mr. Boyd: May we have it?

Mr. Royall: Certainly.

Mr. Boyd: I would like the record to show that the witness now has before him for his use a letter dated July 17, 1951, and it is addressed to Mr. T. O. Andrews, Atlanta, Georgia, and it is signed or has stamped by a rubber stamp: "Signed B. Monroe." The letter is from Atlanta, Georgia.

Mr. Royall: Wait a minute.

Mr. Boyd: That is the subject.

Mr. Royall: We object to it. We can't offer it. And we haven't offered it.

Mr. Boyd: You showed it to the witness.

Mr. Royall: At his request.

Mr. Boyd: He requested it again.

Hearing Examiner Kolb: Is there a question pending?

The Reporter: No, sir.

## By Mr. Boyd:

Q. Did you have an explanation that you wished to make with reference to that letters. A. Yes, I did.

Q. Tell us what it is.

(4078) Mr. Royall: We object, your Honor. Hearing Examiner Kolb: Objection overruled.

A. At just about this time, stated in this letter, the Shell Oil Company opened up a station up the street, and it was open 24 hours. And the first month he was opened I suffered a loss of 5,000 gallons. If I had the dates of his opening the Texas Company could verify that according to their records.

Q. Do you know who Mr. D. O. Andrews was at this time? A. He was known as zone representative.

Q. For the Texas Company! A. Yes, sir.

Q. How abou. D. B. Monroe! Do you know what his title was! A. If I remember correct, assistant district manager in charge of service stations.

Q. For the Texas Company? A. The Texas Company.

Mr. Boyd: That is all that I have.

## Harvey G. Talley, for Commission-Recross

## Recross-examination by Mr. Royall:

(4079) Q. At the time that you lost the 5,000 gallons a month was during the period when the Shell station was open 24 hours, and you were not? A. I was open.

Q. You were not, is that correct? A. It is my recollection that I was open at the same time they opened it up, when it was a new station, and five thousand gallons of my business went to him. He was right up there in the middle of my territory.

Q. Didn't you testify that at the time, and for a few months before you closed; that you were not open 24 hours a day? A. Would you repeat that, please?

Q. Didn't you testify that for the period immediately before your lease was terminated you were not open 24 hours a day? Didn't you testify that? A. I did.

Q. This was in the period just before you terminated, wasn't it? July 1951? A. That is right.

Q. So you were not open? A. No, sir, I was not open.

Q. And he was open? A. Yes.

Q. And you lost 5,000 gallons? A. Yes.

(4080) Mr. Royall: That is all.

## Redirect examination by Mr. Boyd:

Q. At the time you went down to see Mr. Morroe you were keeping the station open 24 hours a day, wezen't you? A. No.

Mr. Royall: He just said he wasn't. Objection. The Witness: Not at that time.

# George R. Boyd, for Commission-Direct

(4081) GEORGE R. BOYD was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

## Direct examination by Mr. Boyd:

Q. Mr. Boyd, will you give us your full name? A. George R. Boyd.

Q. And with what company are you connected and what is your position? A. Manager, Gordy Tire Company.

Q. What is the business of the Gordy Tire Company?

A. We are distributors for tires; recappers, both aircraft and passenger and truck.

Q. How long has the firm been in business? A. Since

1927.

- Q. Will you tell us the brand of tires that Gordy—that is, automobile tires, passenger and truck tires—that the (4082) firm sells? A. We are distributors for Dayton, Fisk and Gillette.
- Q. Does the firm sell batteries? A. Yes, National batteries.
- Q. What is the brand name? National? A. Yes, that is correct, National.

Q. Do you sell accessories? A: No, none at all.

Q. Could you tell us who the manufacturers are for each of those brands of tires that you carry? A. Dayton Rubber Company, Dayton, Ohio, is the manufacturer for the Dayton brand. The United States Rubber Company is the parent company of both Fisk and Gillette.

Q. Would you tell us what the trading area of the firm is? A. All of Georgia and about half of South Carolina.

Q. Is that for all three brands of these tires? A. That is for Dayton. We have only Fisk and Gillette for Georgia.

Q. How many salesmen does the firm employ? A. 26.

Q. Will you tell us the classes of customers to whom the firm sells its tires and batteries? A. We have a retail

## George R. Boyd, for Commission-Direct

trade of course here, and then we have dealers throughout Georgia and half of South Carolina and that territory, and commercial accounts that we service.

(4083) Q. What kind of dealers? A. Small dealers mostly, service stations and garages and car dealers.

- Q. Does the firm also sell tread rubber or camelback?

  A. We sell a little, not much. We don't do very well with that. We use a lot of it but we don't attempt to sell it very often. Sometimes we do.
  - Q. Does it- A. A small amount.
  - Q. I believe you said you do recapping? A. Yes.
- Q. Does that include recapping for service station dealers? A. Yes.
- Q. Could you tell us what the approximate annual volume of business has been for the last several years? A. A little in excess of \$4,000,000 average, the last several years; between four and five million dollars.
- Q. What period of time would that cover? A. Twelve months.
- Q. In other words, that would be 1956 you are talking about? A. Yes, it was a little more in 1956 than in 1955. It will run a little better than \$4,000,000 average for the last five years.
- Q. Could you tell us about the amount of that business that is done with service stations? Would this include new tires and recapping and everything? (4084) A. That is total business that we do, both for the service stations, commercial accounts and retail accounts.
- Q. Could you give us some idea as to the amount that is done with service stations? A. I tried to—we don't separate our business to service stations and car dealers but not more than 25 percent of it would be to service stations, and that is strictly a guess. That is not based on records because it will take a long time to determine exactly what we do with service stations, to go back and

#### George R. Boyd, for Commission-Direct

pick it out. I would say not in excess of 25 percent. Maybe not that much, possibly 25 percent would cover it. That is a good estimate.

Q. Do you have any idea as to about how many service stations of all types are in your trading area? A. No, sir, I have no idea. I sure don't.

Q. Would you have any information as to the number of Texaco stations? A. No, sir, I don't. I don't have any idea.

Q. Do you do any business with Texas stations? A. Yes, we have some dealers who buy from us.

Q. What type business would that be? A. Well, we have some who buy recaps from us. We ship recap tires to them. Occasionally some new tires. I don't recall any battery sales to any of them but we probably have. I know we sell some service station operators that sell (4085) Texaco gasoline, we sell them some tires occasionally. We do business with some of them.

Q. Do you know whether these that you do business with are lessees or independently-owned stations? A. No, sir, I do not.

Q. Do Texas stations generally carry and openly display your new tires—Fisk, Gillette and Dayton—that you know of?

#### Mr. Royall: He hasn't said he knew.

A. As a rule they do not display, make any special display. I have seen a lot of our tires in racks but not any special displays. There again I don't know whether they are leased stations or owned individually. I just don't know.

Q. The business that the firm does with Texas stations, could you tell us whether it is more recapping or new tires or what is it? A. I would say it is more new tires than it would be recapping, because after we leave a certain, after we get a certain distance away from Atlanta then

## George R. Boyd, for Commission—Cross

other recap shops move in and start getting that recap business. We can only go out a certain number of miles and then the local shops begin to move in on us. I would say that the majority of the business that we do with service stations would be new tires business rather than recapping business.

Service stations in Atlanta and the Atlanta area, (4086) out fifty or sixty miles, we do more recapping with that type of service station that was in a 50 or 60 miles redius of Atlanta. But when you get down as far as Macon, for instance, Macon has shops that begin to move in and take the service station business away from you.

Mr. Boyd: I believe that concludes the direct examination.

Hearing Examiner Kolb: You may cross-ex-

## Cross examination by Mr. Barton:

Q. Mr. Boyd, Gordy Tire Company has quite a few competitors in this area in the tire business, doesn't it?

A. Yes, sir, a lot of it.

Q. And that is tire distributors who are soliciting serv-

ice stations along with you? A. Yes.

- Q. I suppose you are the largest one in the State, aren't vou! That is my understanding: You would agree with that, wouldn't you! A. I don't know if we are the largest or not. I am just not familiar with other people's volume.
  - Q. Prior tires are a large competitor of yours? A. Yes.

Q. Selling what brand? A. Hood.

(4087) Q. And Farland Duke is another tire company? A. Yes.

Q. What brand does he sell? A. I believe he has Diamond and I am not sure about the other brand. He has Diamond, which is made by Goodrich.

#### George R. Boyd, for Commission-Cross.

Q. And you have another competitor, Edwards Warren Tire Company? A. Yes, that is right.

Q. Which distributes the Goodyear brand of tires? A.

Q. At Atlanta and surrounding area? A. Yes.

Q. And the American Tire Company is located here and sells at wholesale as well as retail? A. Yes.

Q. It sells the U.S. Royal line! A. Yes.

Q. And the Riddick Tire Company is also located here and has salesmen in the service stations? A. Yes.

Q. What line does Riddick handle? A. He has Mc

Creary and Dunlop.

Q. Do you ever run into Cooper in connection with your service stations? A. Yes, sir.

Q. You do sometimes? (4088) A. Yes, sir.

Q. Do you mean in the Georgia and South Carolina area in which you compete? A. Yes.

Q. Do you have a competitor named Bill's NU Tred, in the tire business here, selling Pennsylvania tires? A. At East Point?

Q. At Decatur; do you know him? A. I am not sure that I do.

Q. How about Carrol's Company, at Hapeville? Do you run into them? A. No, sir. I don't hear of them.

Q. Of course in connection with the sale of National batteries you have a much larger number of battery distributors, don't you? A. Yes.

Q. Would you estimate 40 or 50 in the area— A. I

wouldn't have any idea.

Q. It would be even larger than the number of tires?

A. I am sure it is.

Q. I think you testified that your average sales were over \$4,000,000 in the past several years? A. Yes, sir.

Q. They were over \$5,000,000 in 1956? A. I don't believe our total sales were quite \$5,000,000 (4089) last

### George R. Boyd, for Commission-Cross

year; about that. They run right close to \$5,000,000; \$4,850,000.

- Q. That was an increase of about \$500,000 over 1954?

  A. About \$300,000.
- Q. Of course that was a substantial increase from your 1953 sales. Over a million dollars, wasn't it? A. No, I don't think so. I don't have the 1953 figures. 1953 was a good year. That was one of the best tire years we ever had. But it was not as good as 1956.
  - Q. Not as good as 1956? A. That is right.

(4090) Q. What percentage of your business is commercial business? A. About 50 percent.

- Q. Just what is commercial business, what is the nature of it? A. Well, commercial business as we consider commercial business is to truck operators and freight lines. We consider most of our truck tire business as commercial business, used in commercial ways. And sometimes in selling taxicab fleets we classify that as commercial business. Not as retail and not as dealer business. It is really. If we sell passenger tires to taxicab fleets we consider that commercial business.
- Q. In other words, it is any large, fairly large user who buys? A. Yes.
  - Q. You sell to them directly? A. Yes.
- Q. You sell to retailers around the surrounding area, this two-state area? A. We have small service stations out in the area that sometimes aren't interested in going after truck tire business. We don't try to run the truck tire business through them because it is a different type business.
- Q. It is a sort of specialized business? (4091) A. That is right. They will handle the passenger car business

## George R. Boyd, for Commission-Cross

and we will go direct to the commercial accounts and sell them direct.

Q. What would you estimate that you have? About 3400 accounts? A. I am sure we have more than that.

Q. You would have more than that? A. Yes.

Q. You say you have a recapping business which you carry on in conjunction with your sale of new tires. That recapping is about what? About 25 percent of your business? A. Yes.

Q. That is— A. Maybe a little better; somewhere in

that neighborhood.

Q. That is carried on principally in connection with the 60-mile radius of Atlanta? A. That is true, with the exception of aircraft. We do aircraft recapping which may cover several states, for the airlines and for the Air Force. That is some of our recapping volume there.

Q. And you very actively solicit all the service stations in the Atlanta area for your recapping, as well as the other tire business, don't you? A. Yes, we work the service

stations and commercial accounts.

(4092) Q. You get a good heavy percentage of the recapping business of the service stations, don't you? A. I

wouldn't say we get a heavy percent.

Q. A substantial amount? A. There is a lot of recapping shops get a lot of the recapping in the market. A lot of recappers are after that business. We just get a fair share, I would say, of the service station business.

## George R. Boyd, for Commission-Redirect

# Redirect examination by Mr. Boyd:

Q. Mr. Barton asked you, Mr. Boyd, about some other firms that were competitors of yours. What about the B. F. Goodrich store and the B. F. Goodrich Company! A. The B. F. Goodrich Company is a competitor. They sell tires in places where we sell them. I don't know how they handle their recapping down there with the dealers. I guess they handle that out of the store.

Q. Are they competitors of yours? A. Yes, sir.

Q. And the Firestone Tire & Rubber Company! A. Yes, sir.

Q. You were asked if you were the biggest in the State. How do you think you compare with those two, Firestone and (4093) Goodrich? A. In the State? I am sure we are not as large as they are. I haven't seen their books.

I don't know how much business they do.

Q. You mentioned the aircraft business. What would you say the percentage of your business is, aircraft? A. It is a small percent of our total recapping volume now. And I am not sure what percent it would be last year. Our total recapping volume in aircraft sales last year would not exceed about 25 percent of our total recapping last year, in the aircraft business. Between 20 and 25 percent, I would like to say.

Q. Besides recapping for the aircraft industry do you do any other kind of tire business with them? A. For the aircraft people?

Q. Yes. A. No. We don't sell new tires. We only do recapping for the airlines and Air Force,

Mr. Boyd: I believe that is all.

(Witness excused.)

Hearing Examiner Kolb: Recess.

(A short recess was taken.)

(4094) Hearing Examiner Kolb: The hearing will come to order.

JOHN D. HULME was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

#### Direct examination by Mr. Boyd:

Q. Mr. Hulme, will you give us your full name, please?
A. John D. Hulme,

Q. What is your business, Mr. Hulme? A. I am a city salesman for Gordy. Tire Company.

Q. How long have you been a city salesman with Gordy! A. Since September 17, 1945.

Q. And what is your sales area? A. I would say accounts that are assigned to me in greater Atlanta, including Lithonia, Conyers, and Stone Mountain.

Q. You have accounts assigned to you? A. We have accounts that have been assigned to us to work, and also new accounts that we obtain ourselves.

Q. By whom were they assigned? A. By Gordy Tire Company.

Q. In the area in which you operate, how many Texaco stations would you say there are? A. I have some ten or 12 Texaco stations I call on. Some I get new tire business out of, some recapping, and some both new tires and recapping.

(4095) Q. I meant at this point how many would you say, whether you called on them or not, are in your area?

A. I don't exactly know how many is in the Greater Atlanta—

Q: You said there are more than 12. A. I said I called on 10 or 12 that I have assigned to me.

Q. Have you called on others besides those? Texaco accounts? A. Oh, yes. Do you mean other major oil companies besides?

Q. No. Other Texaco accounts besides these 10 or 12 that you say you sell to? A. Oh, yes. I have other accounts besides those.

Q. I say are there other Texaco accounts that are in your area that you call on that you may not be selling to?

A. Yes.

Q. Do you call on accounts other than those assigned?

A. Yes. I have commercial accounts that I call on in addition. Quite a few.

Q. What percentage of your business would you say is service station business? Of all kinds? A. I would say

roughly 25 percent service stations.

Q. That would be of what products? What kind of business? A. Well, it would be 25 percent of service stations, all (4096) major oil companies, plus commercial accounts.

Q. I mean the type of products you would be selling to them. What would you be selling these accounts? A. I would be selling them new tires and would be selling them recapping and batteries.

Q. What about an account in east Atlanta that you

formerly sold? Do you recall that one?

Mr. Barton: Object.
Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. I have one account in east Atlanta that I have sold since 1954, in September, starting about the 19th, and the name of the station is East Atlanta Service Station, 511 Flat Shoals Avenue.

### By Mr. Boyd:

Q. Is that the first time you sold him, in 1954? A. 1954. And from '54—I mean 1945 was when I first sold him, up through 1954.

Q. Is that Shoals? S-h-o-a-l-s? A. Yes.

Q. You say you sold him during the period 1945 through '54? A. Yes.

Q. What did you sell him during that time! A. I sold him some new tires and did some recapping for him.

Q. What kind of new tires? (4097) A. Dayton tires.

And I have sold him some Fisk and Gillette.

Q. And did you say some recapping? A. Some recapping I have done for him.

Q. Do you sell him today? A. I am not selling him any in the last two years, for objections that he has given.

Q. To you? A. Yes, to me.

Q. What have been those objections? A. Well, back during the years when tires were scarce, naturally most all of the stations of different types got the tires where they could, and we were able to put our Dayton tires along with another brand in his rack on display, and did that up to 1954. Since that time he said that the Texas Company objected to having any other brand except the one particular brand in stock there.

Mr. Royall: Move to strike.

Hearing Examiner Kolb: Motion to strike denied.

#### By Mr. Boyd:

(3)

Q. What is that particular brand? A. Firestone.

Q. Is that the reason he gave you for not buying? A. That's right. That is the reason he gave.

Mr. Royall: Objection. Hearing Examiner Kolb: Overruled.

#### (4098) By Mr. Boyd:

Q. Mr. Hulme, what was the annual volume of business you were doing with that account from 1945 through '54? Yearly.

Mr. Royall: Objection. Hearing Examiner Kolb: Overruled.

A. I would say from 1945 through '54 his average volume would be approximately four to five thousand dollars per year.

Q. Do you know what brand he is carrying today, of

tire and batteries? A. Firestone.

Q. Do you know whether or not that is a leased station or whether the operator owns the station? A. I think it is a leased station, on a yearly basis. I am under that impression.

Q. Do you have a customer, a Texaco station at Memorial Drive and Route 78? A. I do.

- Q. What is the name of the station? A. Memorial Drive Service Station.
- Q. Do you know whether that is a lessee station or one that is operator-owned? A. I am under the impression the operator owns the station. That is he rents it from a party that lives nearby that owns the property.

Q. And it is a Texaco station? (4099) A. Yes, sir.

Q. Do you sell him any merchandise? A. Yes, sir.

Q. What do you sell him? A. I sell him new tires, Dayton; I sell him National batteries; and recaps.

Q. Does he openly display them and sell them in the

station? A. Yes, sir.

Q. What would you say the volume of that account is on Memorial Drive? A. Ewill say it will average \$4,000 per year.

Q. Referring back to the East Atlanta Station for a moment: Did you ever sell him batteries? A. No, sir.

#### John D. Hulme, for Commission-Direct

Q. Just tires? A. New tires and recaps.

Q. Do you get any of his recapping business at the East Atlanta station now? A. No, sir.

Q. What, if any, reason was ever given you for not getting the recapping business? Has he ever said anything about that?

(4100) A. Approximately ten days ago he told me that the Texas Company had informed him that they would like to see him give his recapping to Firestone as he was selling Firestone tires.

Hearing Examiner Kolb: What are you talking about now?

The Witness: East Atlanta Service Station.

#### By Mr. Boyd:

Q. He gave you that information in the course of a regular call at that station? A. Yes, sir. About ten days ago.

Q. I believe you mentioned that you sell 10 or 12 Texaco accounts. Can you tell us who they are and what you sell them? A. Most of the others that I sell are for recapping. One of them is a dealer, and also a Chevrolet dealer—McCurdy Chevrolet dealer, Stone Mountain.

Q. Is he— A. He is a Chevrolet dealer.

(4101) Q. Do you know whether or not he owns the station? A. I presume he owns his building, He has been there some 30-odd years I believe.

Q. He has Texas pump for gasoline? A. He sells Texas.

Q. What do you sell him? A. Recapping. I have been getting his recapping some ten years now.

Q. What line of tires and batteries does he sell? A. I believe he has U. S. Tires mainly. Batteries—

## John D. Hulme, for Commission-Cross

Q. Do you know what battery it is? A. I imagine it is Delco batteries that he stocks.

Next is the new car dealer, McCurdy Chevrolet.

Q. Who are some of the other stations! A. That is the only three I recall now. I have some others in Lithonia, Conyers, that give recapping.

Q. Is this Convers Texaco station? A. That is Con-

yers, Jr.

Q. What is the name of the station? A. I have some others I call on there. Some I get recapping out of, some I don't. But these three here are the main three that I

recall right at present.

Q. What did you say about the others? Do you sell to 10 or 12 others? Or am I mistaken? A. In other words, I said there are some 10 or 12 in all that (4102) I call on in this immediate trading area. But that is the only three that I recall right now, of cases that I can give where we are getting business and where we are not getting business.

## Cross-examination by Mr. Royall:

- Q. Who is this gentleman you were talking to at East, Atlanta? A. Mr. Jacka, who is a brother-in-law of Oscar Hart.
- Q. You have been in that station, Mr. Hardin's station, a number of times, haven't you? A. Yes, sir, quite a few times.

Q. He was selling Southern batteries, wasn't he! A. Yes, sir.

Q. Or Southland! A. Yes, sir. I said I didn't sell him any batteries.

Q. He was selling Southland batteries! A. Southern batteries.

Q. And you talked about his recaps. Don't you know he gets them from McCart's and not Firestone! A. He did some business with McCart's.

#### John D. Hulme, for Commission-Cross

Q. Isn't he doing it today? A. Ten'days ago he told me he was giving it to Firestone. That is Mr. Jacka that told me.

Q Both conversations were with the same man? (4103) A. Yes, sir. Ten days ago it was Mr. Jacka. Mr.

Hardin was off that afternoon.

Q. Were both conversations with Mr. Jacka and one with— A. Ten days ago I talked to Mr. Jacka, his brother-in-law.

Q. And the other time? A. That was the most recent

time I talked this year.

Q. Didn't you mention two conversations? A. I said at times previously that I talked to Mr. Hardin.

Q. You are sure he is not handling McCart's recapping

now? A. That is what he told me ten days ago. .

Q. I know. Did you see any there? A. Yes, I saw some recaps.

Q. Did you see A. I saw some Firestone retreads

and Firestone new tires.

Q. You are certain he told you that he was just handling Firestone? A. He told me that he was giving his recapping to Firestone. He had last year given some to McCart's. And sometimes he carries a car up there to get service in one-day's time.

## Cross-examination by Mr. Barton:

Q. You do some recapping business with M. J. Collins, don't (4104) you? A. No, sir.

Q. At 1156 Memorial Drive? A. One of our other

salesmen might.

Q. You don't have that account? A. I don't have that account, no, sir.

Q. How about E. A. Gresham, 1120 Moreland Avenue?

A. No, sir.

#### John D. Hulme, for Commission-Cross

- Q. You don't have that account either? A. No, sir.
- Q. One of the other salesmen? A. Yes, sir.
- Q. How many salesmen are working this Atlanta area for Gordy Tire? A. I would say roughly around 18.
  - Q. In Atlanta itself? A. In Greater Atlanta.
- Q. In the same area that you are working but have different assigned accounts? A. That's right. We go by accounts instead of divisions or territories in the City.

## (4105) Further cross-examination by Mr. Royall:

- Q. As near as you can recall, what were the exact words said to you by Mr. Hardin? A. Do you mean by Mr. Jacka?
- Q. No. A. Mr. Jacka was the one that said the last words to me.
- Q. What did he say? A. I asked him the question, I said, "For years we kept some Dayton tires in your rack here along with your Firestone. There is not a single Dayton tire up there now. Let's put a few in there with the Firestone."
- Q. What did he say? A. He said, "You know we are on a leased station basis here, renewable from year to year." He said, "There are some here in Atlanta—meaning no names—that have lost leases because they didn't do what the Texas Company told them to do."

And he said, "I would like to give you some business. I (4106) like the Gordy Tire Company and I like you. A lot of salesmen come in here that I don't want to see. You come by here and I like to see you."

Of course, I was looking for some business, but I didn't get it for that reason.

Q. Is that the complete conversation? A. That is the gist of it. Yes.

#### Sam B. Riddick, for Commission-Direct

Q. Tell me what is the gist of the first conversation that you had, back with Mr. Hardin. A. In 1945?

Q. In 1954. A. I have been calling on them for a good

many years. There are a lot of conversations.

Q. I am asking about the conversation that you had. with him in 1954. What were the exact words as far as you can recall? A. As far as I know we did some business up through 1954, but that was the time that he said that he was going to have to stock Firestone tires and that might be opportunities arising in truck tires that he would order some truck tires from us.

And he has bought some in the last two years, but very little.

Q. Is that his entire conversation as far as you recall?

A. That is the gist of it.

Mr. Royall: That is all, sir.

(4107) SAM B. RIDDICK was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

#### Direct examination by Mr. Boyd:

Q. Mr. Riddick, will you give us your full name and business, please? A. Sam B. Riddick, Riddick Tire Company, 1030 Marietta Street, Atlanta, Georgia.

Q. What is your connection with this Company? A. I

am sole owner and operator.

Q. How long has the firm been in business? A. February 11, 1946. The day I was discharged from the Army.

I will never forget that day.

Q. Would you tell us what the business of your company is? A. Primarily it is recapping, used tires, very little other than that. No accessories to amount to anything.

## Sam B. Riddick, for Commission-Direct

Q. Do you sell batteries? A. I have in the last two weeks, but just a few. Never have tried to sell them before.

Q. What is the battery you have taken on? A. Dunlop.

Q. What brands of new tires do you handle? A. We have a state distributorship from the McCreary Tire (4108) and Rubber Company. We also handle Dunlop and Lee. And anything else we can buy right.

Q. What is the trading area of the firm? A. Approximately two-thirds of Georgia and occasional shipments anywhere in the Southeast, on odds and ends merchandise.

We also have a place of business in Moultrie, Georgia.

Q. How many salesmen do you employ? A. At the

present time we have four.

Q. Will you tell us the type? Are these road salesmen? A. Yes, practically all. We have one city salesman who covers the outlying communities. Never over a radius of 40 to 50 miles. We have two other salesmen that we divide the State of Georgia down U. S. 14. One works to the east, one works to the west. We have another, a part-time salesman who travels anywhere out of the State of Georgia. He also sells merchandise for other companies, but we restrict him out of the State of Georgia. He can sell in Florida, Alabama, Tennessee, or wherever he wants to.

Q. With what classes of customers does the firm transact its business? Sells tires to? A. I would say 90 percent of our business is strictly with the small service stations

and recappers and in your smaller communities.

Q. When you say small service stations, will you define that for us? (4109) A. Well, I didn't exactly mean that word small service station. I primarily meant service stations. But your larger service stations, especially around Atlanta, you can't do any good with.

# William Russell Bridges, for Commission-Direct

Q. Can you name any specific stations that you say you can't do any business with? A. No, because I don't—I haven't familiarized myself with the accounts in the City of Atlanta and around in the last five or six years. I have been primarily on the inside on the buying and taking care of the running of the equipment and all. I leave that up to the salesman.

I know something about names, but I wouldn't know exactly where. I would hardly know where they were.

Mr. Boyd: That concludes the direct.

(4110) WILLIAM RUSSELL BRIDGES was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

## Direct examination by Mr. Boyd:

Q. Mr. Bridges, will you give us your full name? A. William Russell Bridges.

Q. With what company are you connected, and what is your position? A. Riddick Sales Company; salesman.

Q. How long have you been a salesman with Riddick?

A. Since about April. 1948.

(4111) Q. What is your sales area? A. It runs a radius of 40 to 50 miles from Atlanta, mostly south. I don't go up north much.

Q. Do you do any business in Atlanta? A. Yes, a little.

Q. What class of customers do you call on? A. Filling . stations.

Q. Have you ever called on the filling stations in Atlanta? A. Yes, sir.

## William Russell Bridges, for Commission Direct

Q. Have you formerly done business with any stations in Atlanta? A. Yes, sir.

Q. Can you name some of them for us? A. Gresham— E. A. Gresham Service Station; used to be Gresham Brothers.

Q. Is that a Texaco station? A. Texaco, On Moreland Avenue.

Q. Mr. Bridges, what type of business did you at one time do with Gresham? (4112) A. Recapping and new tires.

Q. What kind of new tires did you sell him? A. Lee

and Dunlop; both.

Q. Do you know whether that is a lessee station or a station the operator owns? A. No, sir, I am not positive about that.

Q. When you sold him Lee and Dunlop tires did he openly display and sell them in his station? A. Well, it has been about two or three years ago. I don't know. I believe he had them in the back.

Q. When did you last sell him? Tell us that. A. It has been about I would say a little over two years ago.

Q. Up until two years ago how long had you sold him?

A. I had sold him quite sometime. I sold him before he moved on Moreland. He used to be on Bankhead.

Q. Is that Bankhead Bonlevard? A. Bankhead High-

way.

Q. Could you tell us about what the volume of business was that you were doing with him up until 1954? A. I would say it would run between three and four thousand dollars a year.

Q. What occurred in 1954 that you no longer sell him?

te l'abbaco vel valo caise

# William Russell Bridges, for Commission-Direct

#### (4113) By Mr. Boyd:

Q. Answer the question. Do you understand the question? A. I think I understand the question. I believe he is handling Goodrich tires now and he, as I understand it—when he stopped buying from me he took them on—and he said that he couldn't handle—couldn't sell the Lee and Goodrich, too, because he has a tie-up with the Goodrich people.

Q. He told you this in 1954—Mr. Gresham? A. I be-

lieve that is the year. I don't know the exact date.

Q. Are there any other stations that you can name here, in Atlanta, where you formerly sold and no longer sell? A. No, I don't believe any others that I know of right off-hand, except I called on some of them that I never sold, for recapping purposes, but I can't sell them any tires.

Q. Can you tell us the names of some of those? A. Mr.

Lloyd, on Jonesboro Avenue. A. B. Lloyd.

Q. Do you have any idea about the address on Jonesboro! A. It is right there just about a block and a half from the Lakewood section on Jonesboro Avenue.

Q. Is this a Texaco station? A. Yes.

Q. When did you sell Lloyd's? (4114) A. I haven't sold them.

Q. When did you endeavor to sell him? A. It has been about a month ago. And I have called on him again since then.

Q. Does he sell tires and batteries? A. Yes.

Q. What line of tires and batteries does he sell? A. I don't know about the batteries but I know he handles Firestone tires.

Q. What did he say when you endeavored to sell him?

A. He said he was tied up with the Firestone people and they wouldn't like for him—that the only way he can sell them was to just get an order for them and put them on right that same day. He couldn't stock them.

#### William Russell Bridges, for Commission-Direct

- Q. Mr. Bridges, do you know whether or not Mr. Lloyd leases that station or whether he owns it? A. No, sir, he bought that station from Mr. Gilbert. I think it was about a month and a half or two months ago. Mr. Gilbert formerly used to be on Stewart Avenue and went back to his old station.
- Q. Could you name any others? A. Just yesterday I tried to sell a new station, just opened, in Tucker, Georgia.

Q. What is the name of this station? Is it a Texaco station? (4115) A. Yes, sir; L. L. Cruze.

- Q. How do you spell that? A. C-r-u-z-e. It just opened up recently. He has Firestone tires and he also said he couldn't put in any other tires, that he was connected with Firestone.
- Q. How long has he been open? A. I imagine just about a month, or three weeks.
- Q. Is yesterday the first time that you had gotten to see him? A. Yes, sir. I called on him once before but he wasn't in. He just opened up his station.
- Q. How long ago was it that you called on him? How shortly after he opened, in other words? A. About a week or ten days after he opened.
- Q. Did he have tires on hand then? A. Not the first time I called on him.
- Q. There were no tires there? A. No, sir; no tires there.
- Q. Are there any other places, Mr. Bridges, outside of Atlanta? I believe you say you go out 40 or 50 miles—A. Yes, sir.
- Q. (continuing)—where you formerly sold and don't now sell? That is Texas stations. Can you tell me the names? A. One is Bonner Service Station.
- Q. Where is that located? (4116) A. McDonough, Georgia.
- Q. When did you last sell him? A. It has been about a year and a half.

## William Russell Bridges, for Commission-Cross

Q. What did you sell him? A. I sold him recaps, tubes, and a few Lee tires, some truck tires.

Q. Were the few new Lee tires truck tires, or were they truck tires in addition to Lee? A. There were a few new truck tires and truck recaps.

Q. Were you selling him regularly up to then? A. Yes, sir.

Q. What would his volume of business have run, approximately? A. It wasn't too much. I only called on him about once every week or ten days. I don't imagine it will run maybe \$2,000 a year.

Q. Does he handle tires now! A. Yes, sir.

Q. What line of tires does he handle? A. Firestone.

Q. What reason, if any, was given by Mr. Bonner a year and a half ago for not buying from you? A. Well, he stocked up with—well, he already had the Lee tires in, I mean the Firestones, when I sold him the Lees.

Q. Why did he stop buying the Lees! Did he tell you? Give you any reason! (4117) A. No, didn't give any reason.

## Cross-examination by Mr. Barton:

(4119) Q. You sold to Gresham Service Station, did you say? A. For years.

Q. And you sold him recapping? A. Yes, sir.

(4120) Q. That is Gresham's Service Station at 1120 Moreland Avenue? A. I believe that is it. E. A. Gresham.

Q. And when is the last time you sold him recapping?

A. I couldn't give you the exact date. It has been around about two years, I imagine.

#### William Russell Bridges, for Commission-Cross

- Q. Mr. Bridges, how many customers do you have who are handling Lee tires among those 90 that you call on regularly? A. How many handle Lee?
  - Q. Yes. A. I would-say maybe 25 percent.
  - Q. Are handling Lee tires? A. Yes, sir.
  - Q. What are most of them? Service stations? A. Yes.
  - Q. Garages? (4121) A. Yes.
  - Q. Mostly service stations? A. Yes.
- Q. Do you mean that you are selling Lee, Dunlop and McCreary tires? A. That is right.
  - Q. To 25 different customers! A. Approximately.
- Q. Most of your customers then are stocking both Lee and Dunlop tires? A. That is right.
- (4122) Q. Which they buy from you? A. That is right.
- Q. They are not buying tires from anybody else? They are just buying them from you, the Lee and Dunlop tires? A. That is right.
- Q. How many tires do these 25 service stations that you are selling to have facilities for stocking in their service station? A. They only buy three and four at a time. They don't buy a big majority. They just buy what they can keep on hand. These are mostly stations out of town.

#### (4123) Cross-examination by Mr. Royall:

- Q. Do you travel in Alpharetta, Georgia? Is that in your territory? A. No, sir.
  - Q. Is Marietta? A. Marietta is; yes, sir.
- Q. Are you familiar with S. Dobbins, Jr. station at 400 Cheroke Street, Marietta? A. Name?
  - Q. Dobbins? A. No, sir, I don't sell them.

#### William Russell Bridges, for Commission—Cross

- Q. How many stations do you call on in Marietta? A. About four.
- Q. How many Texas stations do you call on? A. Not any.
- Q. Do you call on Paul Cain, at 1060 North Marietta Street? A. Yes, sir.
- (4124) Q. You sell him Dunlop tires? A. I sell him Dunlop tires and tubes.
- Q. He also carries Goodrich tires? A. I believe that is right.
  - Q. What did you say? A. I believe that is right.
- Q. And you call on C. H. Hughes, 1238 DeKalb Avenue? A. No, sir; I don't.
  - Q. Hughes? A. Hughes?
- Q. Yes. Is that in your territory? A. I go by there. I don't call on him.
- Q. Do you know Mr. John Tate, at Decatur, Georgia?
  A. I know Mr. Tate on Memorial Drive.
  - Q. Do you sell him? A. Yes, sir.
- (4125) Q. The business of the company has grown, hasn't it, from \$680,000 sales in 1955 to \$900,000 in 1956, hasn't it? A. I wouldn't know that figure.
- Q. It has grown a great deal, hasn't it? (4126) A. Yes, sir; it has grown all right.
  - Q. What is it exactly that you said to Mr. Gresham?
- Q. I didn't ask you that. I asked you a very simple question. What are the words he said to you as near as

#### William Russell Bridges, for Commission-Cross

you can remember? A. It has been a little over two years. I don't know exactly the words.

Q. What is the substance of the words? A. The substance is that he wouldn't handle any more Lee tires, or Dunlop tires; that he was obligated to Goodrich.

Q. That is as accurately as you can remember? A.

That is as close as I can remember.

- Q. Let's take the next one. What as nearly as you can recall are the words or substantially the words that Mr. A. D. Lloyd said to you? A. That he was affiliated with; in other words, he was selling Firestone tires and he couldn't put any other brand tires in his place of business.
- Q. As far as you know that is the substance of what he said? (4127) A. That is what I can recall of it; yes, sir.
- Q. What did Mr. Tuckert say to you as near as you can recall? A. Mr. who?
- Q. Mr. Cruze. A. That he was putting in Firestone tires and wasn't handling any other type fires than Firestone.
- Q. That is the substance of what you say he said? A. Yes, sir.
- Q. Mr. Bridges, some people you try to sell you sell, and some you don't, is that right? A. You are right.
- Q. You are picking up new ones all the time and now and then losing some of the old ones? A. That is correct.
- Q. And that is the way the tire business goes? A. It is up and down, yes.
- Q. When a fellow doesn't buy your goods he always has some good excuse, hasn't he? A. I imagine he has.
- Q. He doesn't want to hurt your feelings and he always gives some reason, doesn't he? A. I presume so.

Mr. Royall: That is all, sir.

# William Russell Bridges, for Commission—Redirect Earl Martin Gause, for Commission—Direct

## (4128) Redirect examination by Mr. Boyd:

- Q. Do you know whether or not Mr. Cain owns that station or whether he leases it from someone? A. No, sir; I don't.
- Q. What about Mr. Tate, on Memorial Drive? Do you know whether he leases or owns the station? A. No, sir, I don't but I have done some business with him.
- (4130) EARL MARTIN GAUSE was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

## Direct examination by Mr. Boyd:

- Q. Mr. Gause, will you give us your full name? A. Earl Martin Gause, Jr.
- Q. What is your present home address? A. 1159 Virginia Circle.
- Q. Have you ever been in the service station business?
  A. Yes, sir.
- Q. What kind of station did you operate and where was it located? A. Texaco station, 1958 Piedmont Circle.
  - Q. Is that Northeast? A. Right.
- Q. How long were you in business there? A. November 17, 1952, to September, 1953.
- Q. With whom did you negotiate, Mr. Gause, in becoming a lessee of that Texaco station? A. Through Mr. Charles Fitts, and Mr. Walter Jones.
- Q. How many meetings were there leading up to this, in these negotiations leading up to the lease? (4131) A. I had two interviews with Mr. Fitts, and I believe Mr.

Jones was there for one of them. And that was the extent of the meeting.

- Q. Who is Mr. Fitts? Do you know what his position was? A. At that time I believe he was division manager of the Texas Company.
- Q. How about the other gentleman? A. He was a sales representative for Texas.
  - Q. And his name. A. Walter Jones.
- Q. Where did these meetings take place. A. In the Doraville plant of the Texas Company.
- Q. Before the lease was signed was there anything said about TBA? A. There was, yes, sir.
- Q. Tell us what was said and by whom. A. To my knowledge Walter Jones said that the people that I was buying the station from were handling Firestone at the time.
- Q. Excuse me. Was there another operator in the station before you took over? A. Yes. There were two partners.
- Q. Go ahead. A. And they said something to the effect that it was good merchandise, a good product, widely advertised and so forth and (4132) so on.
  - Q. Which product? A. Firestone.
- Q. Go ahead. A. And that they would like for me to continue to carry that product.
- Q. Did they say anything about any other TBA line?
  A. They did mention the fact that most of their stations do either handle Firestone or B. F. Goodrich products.
- Q. And then on the basis of that discussion what did you do about TBA? A. Being a novice in the business, rather than go into any more detailed work than I had on my hands already, I just took the line that the gentlemen before me were carrying at that time—Firestone products.
  - Q. Did you buy their inventory? A. Yes, I did.

- Q. Had you ever operated a service station prior to this time? A. No, sir.
  - Q. That is as a lessee? A. No, sir.
- Q. Was any information given you about where to acquire additional Firestone TBA? A. Do you mean the source?
- (4133) Q. Yes, sir. A. Only the information that I got from the gentlemen that I bought, that they were buying through the Spring and Baker store.
  - Q. Is that the Firestone store? A. Yes.
- Q. Is that Spring and Baker Streets that you are talking about here in Atlanta? A. The corner of Spring and Baker Street, yes, sir. I assumed at the time that that would be my source of supply?
  - Q. Was it? A. It was.
- Q. Mr. Gause, was anything said by the Texas representatives about your handling any other brand of TBA other than Firestone or Goodrich?

Mr. Royall: Objection only because he asked it before. That is the only objection I have.

Hearing Examiner Kolb: Objection overruled.

#### By Mr. Boyd:

- Q. You may answer. A. No, sir.
- Q. After you signed the lease and so forth—you did sign the lease? A. Yes, sir.
- Q. Who handled your account thereafter with the Texas (4134) Company? A. Walter Jones.
- Q. Did any representative of Firestone call on you after that? A. Yes, sir. I might say that when the station changed hands—a Firestone representative was present at the time we took inventory—the Texas Company was represented by Mr. Jones and the Firestone Company was represented by Mr. Lamarr South.

We inventoried the equipment and so forth and so on and they both were present at that time.

Q. Is that the first time you had met the salesman for

Firestone, at that time? A. Yes.

Q. During the time that you were in that station what was the average TBA volume? A. The average TBA volume was \$200 a month.

Q. What was the gasoline gallonage? A. Between 10

and 11,000 per month.

Q. What was it when you went into the station? A.

When I went into it?

- Q. Yes. The gallonage. A. That was sort of vague. The gentlemen that I bought it from didn't offer to show their books, and I didn't insist upon it. The Texas Company keeps a running record of the purchases made by each station, by the month. Sometimes it (4135) might be less than you actually sell, and sometimes it might be more than you actually sell, because they overlap each other a little bit.
- Q. Did any representative of the Texas Company ever tell you what the station had been doing, approximately?

A. No, sir. The only thing I can say is just what I said before, that they gave me—showed me the figures in fact, of the purchases made by the owner from their bulk plant in Doraville. Other than that, I did not know.

#### By Mr. Boyd:

- Q. And you saw the records? A. Yes, sir.
- Q. How much did you say it was?

(4136) A. Between 8,500 and 9,000 gallons a month.

Q. When you left the station what was the gallonage? Monthly. A. When I left I would say it was 10,000 gallons a month.

Q. When you took over that station, Mr. Gause, was there any other brand of TBA in it other than Firestone?

A. Yes, there was.

Q. What was that? A. There were several gallons of

Prestone anti-freeze.

Q. Anything else? A. Well, I remember I had to buy around \$24.00 worth of Monroe shock absorber, and that is all, I think.

Q. Did you continue to handle Firestone while you operated that station? A. I did. Not the full time, no.

Q. What happened? Did you take on some other line?

A. Yes. I adopted the B. F. Goodrich line.

Q. And about how long after you went into the station was it that you took on the Goodrich line? A. This was in the first of June, 1953.

(4137) Q. How did you take on the Goodrich line? A. It was on my own volition. I thought Goodrich had a very good tire in their new tubeless tire that had come on the market about a year previous to that. That was my main reason for changing the line, because I thought it was a better tire than Firestone. Firestone at that time had one tire that was a tubeless, of the tubeless type, and it was a premium tire and cost a whale of a lot of money.

Q. Did you discuss the change with Mr. Jones? A. Did

I discuss it?

Q. Yes. A. No, I didn't.

Q. Did you discuss it with anyone in the Texas Company? A. Not until they found out that I was making the

change. In fact, the change had been completed or was in the process of being completed, and then I did talk to Mr. Jones at that time. He did come after I had already adopted the plan and had changed.

Q. What was your source of supply of Goodrich- A.

It was an independent company-

(4138) Q. (continuing)—TBA? A. It was an independent company by the name of the Van Dusen Tire Company.

Q. Where was that located? A. At that time it was

located at 225 Moore Street, Southeast.

Q. What, if anything, was said by Mr. Jones about your changing to Goodrich from Firestone?

Mr. Barton: Object. Mr. Royall: Objection.

Hearing Examiner Kolb: The objection will be overruled.

A. Nothing derogatory or anything like that. He said "If you wanted to do that, that's all right."

Mr. Boyd: May we have a recess? Hearing Examiner Kolb: Yes. (A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

#### By Mr. Boyd:

Q. Mr. Gause, when did you cease to be a lessee of the Texas station that you had? A. I believe it was in the latter part of August or the first of September.

Q. Will you tell us the circumstances under which you

ceased to be a lessee! (4139) A. Yes, sir.

I took a four-day holiday and the station was closed during that time. I mean there was no operator there at all.

Q. And that resulted in cancellation? A. Yes, sir. The lease the Texas Company gave me there is a clause saying that if the station is closed for more than 48 hours in one stretch of time that your lease is automatically cancelled.

Mr. Boyd: That is all.

Mr. Royall: No cross-examination, your Honor.

RICHARD ELIAS TIDWELL was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

#### Direct examination by Mr. Boyd:

Q. Mr. Tidwell, will you give us your full name please and home address? A. Richard Elias Tidwell, 151 Pine Valley Drive, Forest Park, Georgia.

Q. What is your present occupation! A. Pilot for Delta

Airlines.

(4140) Q. Mr. Tidwell, have you ever been in the service station business? A. Yes, sir.

Q. When were you in the service station business, and what kind of station was it? A. It was a Texaco station, from October, 1953, until March, 1955.

Q. Where was this station located? A. 4290 Peachtree Road, Northeast, Atlanta. Brookhaven as you might call it.

Q. Had there been a lessee in that station prior to your tenure! A. No, it was a new station.

Q. Had you ever been in the service station business prior to that time? A. No, sir.

Q. Before the lease was negotiated, was there any discussion with representatives of Texas regarding TBA? A. Not that I recall.

Q. Did you ever discuss it with them? A. When I entered the business, when I first went out to talk with Texaco, I desired a Texaco station. Since I was new in the business—I had worked in a service station but never owned one—I asked them for any help they might give me. As far as any specific declaration as to handling any one (4141) line of merchandise, they did not.

Q. They didn't tell you any type, about any TBA? A. They—if they did, I do not remember it. I don't believe

they did however.

Q. Where did this discussion take place? A. At the

Doraville sales office of the Texaco Company.

Q. With whom did you deal in negotiating for the station? A. My first interview was with Mr. Singleton. Mr. Fitts at the time I believe was out of town. The second interview was with Mr. Fitts. And then I talked with Mr. Walter Jones also.

Q. What was the position of Mr. Singleton? A. I will probably get the names twisted around, but Mr. Jones was the salesman, Mr. Fitts was the, I believe the district sales representative, and Mr. Singleton the regional. I might be a little mixed up.

Q. Did you carry TBA in the station? A. Yes, sir.

Q. What line did you carry? A. I handled Firestone.

Q. How did it come about that you handled the Firestone line? A. After I negotiated with the Texas Company the representative from Firestone and the representative from Goodrich contacted me.

Q. Where was this contact made? Where did they see you? A. One came by the house. I was not there, however, and he (4142) eleft material. That was from Goodrich. I did talk with him over the telephone.

The other was through Firestone and was Mr. Buck Head. He called me at home and I met him at the station

before it was completed and we talked there.

- Q. Did you take one of those lines? A. I chose Firestone.
- Q. When was it you chose Firestone? A. Almost immediately. I liked the line that Firestone had. It seemed to me more complete than the Goodrich. So I chose the Firestone. That was—I can't say exactly how long prior to the station, due to the fact it was undetermined at the time as to when the station would open. But I would estimate a month before we opened the station that I definitely chose Firestone.

Q. Then you had that in when the station opened! A. Yes. When the station opened we had a complete line of the Firestone products in. And the Firestone salesmen, I would like to say, worked with me getting it set up for opening. They were very good in that respect.

I would like to say, also, no other independents contacted me. I don't know if they didn't know how to contact me, or what. But if they had, I probably would have chosen Firestone anyway, because I still think it was the most complete line. Those were the two dealers who contacted me.

(4143) Q. When you said independent, you mean other competitors selling TBA? A. When I say independents, I mean other competitors.

Q. Did you ever talk to Mr. Fitts about any other line

of TBA? A. Only tires.

Q. Can you tell us what you told him and the reason for your discussion! A. I had a customer who was a salesman for what I might call an off-brand tire. A cheaper tire. And this customer told me that he could make me a pretty good proposition on some seconds. And since I had most of—most of my trade was with the higher element of people. However, I did have a goodly portion of my business from the colored section where they couldn't

afford the competitive—where they couldn't afford the more expensive tires.

I was thinking seriously about putting in a line of the second cheaper brand tires. And I explained this to Mr. Fitts. He told me at that time—and I will say it as much in his words as possible—he said, "Dick, we cannot tell you not to handle these tires, but we attempt to be more lenient, or look with favor on our dealers who are more loyal to us." As a consequence, I told him that I would not handle the tires.

Q. At that time did Mr. Fitts give you any reason for that? (4144) A. No. Or if he did, I do not remember.

Q. Did you take on the cheaper line of tires? A. Not

in stock. But I did sell some.

Q. How did you sell them? A. Only by—if I knew a person who wanted a tire and he couldn't afford a more expensive tire, I would arrange to have one picked up or one delivered to me, or a few.

Q. Did you ever display those tires in your station?

A. No. I never displayed any other product than Firestone.

Q. Did you sell any or display any other batteries? A. I sold them, but I did not display them. There again—

Q. How did you sell them? A. There again, with the cheaper element of equipment, I coudln't sell the Firestone battery to some of my customers; although it was a better battery they didn't want it for their cheap cars. And I would arrange to have a battery picked up or delivered to me for a specific person.

Q. Mr. Tidwell, why didn't you ever carry any other

brand of TBA in your station other than Firestone?

Mr. Royall: Objection?
Mr. Barton: Object.

Hearing Examiner Kolb: The objection will be overruled.

A. When I found out that the Texas Company desired me to carry only one line, I endeavored to work with them.

#### (4145) By Mr. Boyd:

Q. When did you find that out?

Mr. Royall: Objection. Hearing Examiner Kolb: Overruled.

A. I found it out when I tried to handle the other line of seconds.

#### By Mr. Boyd:

Q. From Mr. Fitts? A. Yes.

Mr. Royall: Objection to the last question, too, your Honor.

Hearing Examiner Kolb: Overruled.

#### By Mr. Boyd:

Q. Mr. Tidwell, will you tell us what the gasoline gallonage was in this station, from the time you took it over until you left? A. When I opened the business the first month I pumped approximately 12,000 gallons. It varied then up to 20,000, and at the time I sold it was approximately 16,000.

Q. Could you give us some idea as to the TBA volume monthly? A. I have some exact figures over there if you so desire. Or I can give you an estimate.

Q. Since you have the actual records here, we might as well make use of them. A. I have the sales here for each month.

(4146) Q. Are these your records that you had on the operation of the station? A. These are my records, kept by a certified public accountant. Would you like it by month?

Q. Yes, sir. You were there I believe you said from October 1953 to March, 1955. A. October was a partial month.

#### (4147) By Mr. Royall:

Q. May I see what he is looking at?

Hearing Examiner Kolb: Come around here and look at it while he is testifying.

A. It begins in October 1953. They are broken down as to gas, oil, lubrication, accessories, tires, and batteries. These are under one category, tires and batteries, and accessories separated from the tires and batteries. There will be two columns.

For October 1953 the accessories were \$128.39 of sales; tires and batteries, \$83.47 for that partial month.

November, accessories, \$295.10; tires and batteries, \$401.01.

December, accessories, \$407.71; tires and batteries, \$387.07.

January, 1954, accessories, \$212.80; tires and batteries, \$517.24.

February, accessories, \$164; tires and batteries, \$490.67. March, accessories, \$314.44; tires and batteries, \$463.28. April, accessories, \$374.26; tires and batteries, \$818.27. May, accessories, \$328.47; tires and batteries, \$934.29.

(4148) June, accessories, \$337.18; tires and batteries, \$683.70.

July, accessories, \$263.76; tires and batteries, \$777.18. August, accessories, \$193.55; tires and batteries, \$707.79. September, accessories, \$354.22; tires and batteries, \$345.21.

October, accessories, \$165.42; tires and batteries, \$331. November, accessories, \$192.41; tires and batteries, \$409.08.

December, accessories, \$360.43; tires and batteries, \$309.43.

January, 1955, accessories, \$145.83; tires and batteries, \$336.63.

February, accessories, \$121.92; tires and batteries, \$598.60.

And March was a partial month and I don't have those complete figures.

#### By Mr. Boyd:

Q. Mr. Tidwell, was your lease up, was it at the end of the term when you left the station? A. No, sir.

Q. Will you tell us the circumstances under which you gave (4149) up or left the station? How did it happen? A. Two reasons. One is that the gallonage—

Mr. Royall: Your Honor, let us have an objection because I can't tell what the answer is going to be, the general nature of it. He'didn't ask him the reasons. So I want to object. This is not responsive.

Hearing Examiner Kolb: Read the question.

Mr. Boyd: What are the reasons? That is what

I want.

Hearing Examiner Kolb: Do you object to that?
Mr. Royall: Yes, sir.
Hearing Examiner Kolb: Overruled.

#### By Mr. Boyd:

Q. Go ahead. A. Two reasons: One is that the gallonage had dropped considerably, and I felt it was due to Texaco putting up another station. It could possibly have been my management. But I felt that it was additional stations. But the main reason, however, was my desire to get back into flying.

#### Richard Elias Tidwell, for Commission-Cross

Q. And had another Texaco station been opened in the vicinity? A. Yes.

Q. How close to your station? A. About six-tenths of

a mile in an apartment project.

Q. Then you voluntarily gave up the station? (4150) A. Yes.

#### Cross examination by Mr. Barton:

Q. Mr. Tidwell, it wouldn't have been very good business in opening up that station without some TBA on hand to serve the customers when they came in on the first day, would it? A. Absolutely.

Q. You mean it was good business to have it there?

A. Right.

Q. You had to be in complete operation when you opened your doors? A. Right, and as I said, the Firestone man was most cooperative in helping me get it ready for opening day.

Q. What did that involve? What as a practical matter does it involve to get that station opened? To get your material in place? A. I more or less put myself in his hands by telling him that I would like a—what is the word—

Q. Proper assortment? A. Right. A proper assortment to cover my needs out there. And since he was more—since Mr. Head had been in that neighborhood for some while dealing with several service stations, I felt like he would know approximately what I would stock. And he put me in I thought a very representative (4151) stock.

Q. That was of tires? A. Tires, batteries, and accessories.

Q. And the same problem on batteries. There are several different sizes and types of batteries? A. Right. I only carried one style.

#### Richard Elias Tidwell, for Commission-Cross

Q. But the different groups? A. But the different groups, right.

Q. And the same is true I suppose of accessories? Different sizes and types of accessories which have to be carried? Fan belts, for example? A. Right, in the fan belt line.

Q. An assortment so that you can cover it? A. An assortment, yes.

Mr. Barton: That is all that I have.

## Cross-examination by Mr. Royall:

Q. Mr. Tidwell, you recognized, did you not, in your selection of Firestone that it was advantageous to a service station selling one of the leading brands of oils to sell a nationally recognized and advertised tire, did you not? A. Right, and if as I said, or if I left it out, if there had been 20 people calling on me I probably would still have picked Firestone. But only the two called on me.

Q. I understand. And you recognized also, did you not, in making that selection, that throughout the country Firestone (4152) is sold in service stations in every locality and by a great number of Firestone— A. They are sold by a great many people and in a great many places other than service stations.

Q. And they are always readily available for replacement anywhere you go in the United States? Is that right? A. Well, that is true. One of my biggest, main choices of picking the Firestone tire is that I was given my own judgment as to adjustments. I felt that people could come to me and I could make a proper adjustment on a Firestone tire and I would have a satisfied customer.

Q. In the case of Firestone as distinguished from an off-brand tire or off-brand battery, the adjustments could be made more readily if your customer traveled in any part of the country, could it not? A. I would imagine so, sir.

#### Richard Elias Tidwell, for Commission—Cross

Q. Your records which you have there, you didn't purport to divide them down into the source of your supply? You say you handled some other items. They are not separated there. That is total TBA? A. That is total. But the other was minor.

Q. You said that. But the amount is not shown there?

A. The amount is not shown:

Q. In your transactions with Mr. Fitts, there was a background of extreme close friendliness between the two of you, (4153) was there not? A. Yes. With everyone connected with both Texaco and Firestone.

Q. Particularly with him, you saw a great deal of him?

A. I saw a great deal of him. However, I saw more of the

salesmen, naturally.

Q. But you did see him, and I believe when you entered the Air Force that he was one of those that you asked to recommend you for that. Is that right? A. When—

Q. I don't mean the Air Force, I mean the airline. Didn't he write you a letter of recommendation? A. I

honestly can't say, sir.

Q. You don't recall? A. I believe that if I did he would

give me a very fair report.

Q. Your discussions with him were more in the attitude of asking his advice because you had confidence in his judgment, is that right? A. I asked him two reasons: One, I had confidence in his judgment. The other is if he had any objections. Because I wanted to stay on good standing with the Texaco Company,

Q. You never saw any indication of not being on good standing, did you, at that time? A. No. Everything is just like I said. He didn't say I (4154) couldn't handle

it.

Q. When you bought the tires, when occasion arose, you met the needs that came up, didn't you? A. Well, most

#### JA 1218

#### John D. Scott, for Commission-Direct

of them. I probably could have met more if I had stocked them.

Q. But there was no discrimination or anything against you at that time, was there, at the station? A. No, there was no discrimination. However, I didn't handle them.

Q. But you did buy them from time to time? A. Right.

- Q. When did anyone first talk to you about coming here as a witness? A. The exact date, sir, I can't say. It was—
- Q. Three months ago? A. No, sir, it wasn't that long ago.
- Q. Two months ago, perhaps? A. I think it would be closer to a month to six weeks.

Mr. Royall: That is all, sir.

(4161) JOHN D. SCOTT was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

## Direct examination by Mr. Boyd:

- Q. Mr. Scott, will you give us your full name? A. J. D. Scott.
  - Q. What is your first name? A. John.

Q. Have you ever been in the service station business?

A. Three years up to the 11th of this month, 12:00 o'clock.

- Q. Where was this service station located? A. 556 Candler Road.
  - Q. In what city? A. In Decatur, Georgia.
- Q. What kind of station was this, Mr. Scott? A. Texaco station.
- Q. Do you have your lease with you, a copy of the lease?

  A. I think I have. I found it.

#### John D. Scott, for Commission Direct -

Mr. Boyd: Your Honor, I ask that there be marked (4162) for identification as the next Commission exhibit number, which I believe is 168, a copy of a letter dated February 3, 1954, on the letter-head of the Texas Company and addressed to Mr. Douglas Scott, and bearing the signature of M. W. H. Griffin, Sr., assistant division manager of the Texas Company.

And as Commission Exhibit 169 a form, apparently a Texas form, S-402, and 5-52-30-M, addressed to the Texas Company, Doraville, Georgia, and signed by Douglas Scott. It is a form letter in which

the blanks haven't been filled in.

And as Commission's Exhibit 170-A and B a copy of a lease dated January 12, 1954 between Douglas Scott and the Texas Company.

I ask that those be marked for identification.

Mr. Lorenzen: Didn't you say Exhibit 169 was in blank?

Mr. Boyd: No, I said it was a form. If I did say blank, I didn't intend to.

Mr. Lorenzen: It is filled in to this gentleman. I believe it is signed by him. Isn't that right?

Mr. Lorenzen: Yes.

Mr. Boyd: And it is addressed to the Texas Company.

(4163) (The documents referred to were marked Commission's Exhibits 168, 169, and 170-A and B for identification.)

#### By Mr. Boyd:

Q. Mr. Scott, handing you Commission Exhibits 168 through 170, are those the lease and other papers that you received when you became a lessee of the Texas Company? A. Yes, sir.

## John D. Scott, for Commission-Direct

Q. And the lease under which you operated the station while you had it? A. Yes, sir.

Mr. Boyd: I offer the papers in evidence.

Mr. Royall: We have no objection. a.

Hearing Examiner Kolb: The documents will be received in evidence as Commission Exhibits 168 through 170-A and B.

(The documents heretofore marked Commission's Exhibits 168, 169, and 170-A and B for identification were received in evidence.)

Mr. Boyd: I would like to ask that permission be granted to substitute photostats for the originals of those three documents.

Mr. Royall: That is satisfactory to us.

Hearing Examiner Kolb: Photostatic copies of Exhibits 168, 169, and 170-A and B may be substituted for the originals.

#### (4164) By Mr. Boyd:

- Q. Mr. Scott, with whom did you negotiate in negotiating that lease? I mean the officials of the Texas Company. Can you name them for us? A. Mr. Fitts, Mr. Patton.
- Q. Where did these negotiations take place? A. At the office at Doraville.

Q. Doraville, Georgia? A. Yes, sir.

- Q. Before the lease was signed was there any discussion with Mr. Fitts and Mr. Patton about TBA? A. Yes, str.
- Q. What was said by you and by them? A. They said take your choice, either Firestone or B. F. Goodrich.
- Q. Did they indicate—did either Mr. Fitts or Mr. Patton tell you that you could handle any other line of TBA other than Firestone or Goodrich? A. No, sir.
- Q. Did you select one of those? A. Yes, sir; I took B. F. Goodrich.

# John D. Scott, for Commission Direct

Q. Had there been another lessee in this station when you took it over? A. No, sir.

Q. Was it a new station? (4165) A. Yes, sir.

Q. How soon after the lease was negotiated was it that you opened the station? A. I was open a couple of days, maybe three or four days, before I signed the last contract.

Q. When you say "the last contract," is this the lease

that you are talking about (indicating)? A. Yes.

Q. It is dated the 12th day of January 1954? A. That is right. I started moving in about the 13th, I mean about

the 11th, about two days before I opened up.

Q. Did you already have a stock of TBA then? A. No, sir. I bought it all from B. F. Goodrich through Mr.—what is his name now?—he is out of business. He used to be the distributor for them. I bought \$2800 worth of stuff from them.

Q. You can't recall the name of the Goodrich place

where you got it? A. He come through Goodrich-

Mr. Barton: It is VanDuzen.

#### By Mr. Boyd:

Q. Is that right? A. That is right.

Q. Did you have your stock in the station, of TBA tires, batteries and accessories—when you opened the station? (4166) A. Yes, sir.

Q. When did you first talk to anyone from Goodrich about the stock of TBA that you were going to have there?

A. About two or three weeks before I opened up.

Q. What about the recapping? Did Goodrich take care of that? A. They did up to a year ago.

· Q. Did you continue to buy your TBA from Goodrich?

A. Yes, sir.

Q. After you opened? A. Little odds and ends come by, peddlers, when I had to have something.

#### John D. Scott, for Commission-Direct

Q. Tires and batteries! A. Yes.

Q. You obtained them from Goodrich? A. All but a few I bought, some cheap batteries, \$7 or \$8. I put them in the back room. They weren't displayed.

(4167) Q. Did you ever talk to anyone at the Texas Company about the batteries being on display? A. I never sold anything but a Goodrich battery up to about 7 or 8 months ago. I was selling nothing else but that.

Q. What about tires? A. Never sold but Goodrich

tires.

Mr. Royall: I wish you would give us time. I move to strike the previous answer.

Hearing Examiner Kolb: Denied.

#### By Mr. Boyd:

Q. When you started selling Sheffield batteries did you have any discussions with anyone at Texas in that connection? A. No, sir.

Q. You said you handled some other tires other than Goodrich? A. No, sir; nothing but recaps, the last year.

Q. Did you handle Goodrich tires and batteries, with the exceptions you have mentioned, during the whole time of your lease. A. Yes, sir.

Q. This VanDuzen, was that the supply point for the B. F. Goodrich! A. I think it went through him at that

time, when I went (4168) in business.

Q How long did that continue with him? A. About

four months, I imagine; maybe five.

Q. After that, from whom did you get a supply of Goodrich TBA? A. From Courtland Street Store, corner of Courtland and Alban Avenue, a B. F. Goodrich store.

## John D. Scott, for Commission-Direct

Q. What was the reason you changed from VanDuzen over to the Goodrich supply store?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

#### (4169) By Mr. Boyd:

Q. To get your supply of TBA? A. It was coming through them anyhow, through the warehouse out there. He just went out of business.

Q. Van Dusen did? A. Yes, sir.

Q. Just to be clear, you ceased buying from Van Dusen about four months after you had been in the station in 1954? A. It wasn't much longer than that. It might have been a little longer. I don't remember exactly the date. It was all Goodrich products I got from him.

Q. You say you had the recapping done at Goodrich

until sometime this past year? A. Yes, sir.

Q. Where did you have it done after that! A. Collins Recapping Company, on Candler Road.

Q. What city was that in? A. DeKalb County.

Q. What city? A. Decatur, Georgia.

Q. Did you ever have any discussions with any representatives of Texas regarding the recapping? A. No, sir, I haven't. Only I told Mr. Brown I was going to give it to him. He was a personal friend of mine.

Q. Who is Mr. Brown? (4170) A. He is a supervisor

for the Texaco Company. Sales representative.

Q. When you told him that did he say anything about

it? A. No, sir, he didn't.

Q. Would you tell us, Mr. Scott, about what your volume of TBA was annually? A. The first two years it went over \$12,000. I imagine the past year, the bookkeeper hasn't given me the figures, between five and six thousand. Over five I think.

- Q. Did that include the recapping? A. It included—I didn't give any recapping this past year.
- Q. The figure you gave me, from whom would those five or six thousand purchases have been? A. B. F. Goodrich.
- Q. What about the recapping? A. It run about four or five thousand a year.

Q. Each year you were in there? A. Yes, sir.

Q. Would that have been true of the past year, 1956? A. I believe it would have been a little bit more than four thousand.

Q. You gave that to? A. Collins.

Q. Mr. Scott, what was the gallonage you were pumping in that station from the time you opened it until you left it? In (4171) other words, on an average basis, monthly basis? A. The first two years I averaged over 26,000.

Q. Gallons? A. Yes, sir.

Q. A month? A. Yes, sir.

Q. What about this past year? A. Pimagine this past year we had 11 new stations opened in a mile and a half of me, and I averaged this past year, I believe, 23,000. Maybe a little better. They weren't Texaco stations.

Q. When you first went in the station what was the name of the salesman you dealt with? A. Mr. Emil Patton.

Q. Did he continue to handle the account the whole time? A. Up until I guess maybe six months ago, or seven. I don't know exactly.

Q. Who started handling it then? A. Mr. Brown. 4

Q. He is with the Texas Company? A. Yes, sir.

Q. Did you ever have any discussions with Mr. Brown about the operation of the station? A. No. All he ever done was come down and sit around and then get up and leave. He just was supposed to be a salesman, I (4172) thought.

Q. Do you recall any discussions with him about anything on the premises? A. Never discussed at all the whole time he served me. Nothing about the place at all.

Q. What about the clock? A. Oh, the clock?- That

went on for three years.

Q. Mr. Scott, with respect to this clock, when was it first put up? A. About two and a half—nearly three years

ago now. Right after I opened up I bought it.

Q. What was the discussion with you and Mr. Brown about the clock? A. He called me up one time after he cancelled my lease, saying my lease was cancelled. He told me to take it down. I said I am going to stay here four more months, and I am going to leave it up there and keep it up there.

Q. Did Mr. Patton ever say anything to you? A. Mr. Patton was pretty nice to me, and I took it down several times when people would come in from New York or some-

where, and put it inside.

Q. What people are you talking about from New York?

A. I don't know. Big wheels I guess. Big shots.

Q. From what company! A. Texas Company.

(4173) Q. Did Mr. Brown give you any reason for asking you to take the clock down? A. No, not on the 'phone. No, sir.

Q. Did he give you instructions anywhere? A. Mr. Fitts told me about two and a half years ago when I bought the clock that—it cost \$220. I said I wasn't going to throw away that much money. I am going to put the clock up.

Q. Did he ask you not to put it up? A. I already had

it up.

Q. Did he ask you to take it down? A. Yes, sir.

Q. What reason did he give you! A. He said it wasn't company policy to have a clock. But last year they came out selling clocks. I certainly wasn't going to send it back.

Q. Did someone from the Texas Company offer to sell you one? A. Yes. They sent me a notice in the mail. They were selling clocks last year.

Q. From whom was that received, that communication?
A. It come from out of New York. I don't remember. I

had a good clock.

Q. Was it someone from the Texas Company? A. Yes; it was advertised. I forget now what it said on there.

Q. Did Mr. Brown talk to you about bnying a clock from Texas? (4174) A. No. That was before Mr. Brown took over.

Q. Did you ever have any discussions with Mr. Brown

concerning cold drink machines? A. Oh, yes.

Q. What was said about the cold drink machines? (4175) A. I talked more of that with Mr. Fitts than anybody else.

Q. What was that discussion? A. He told me I didn't

need but one drink box.

Q. How many did you have? A. Two.

Q. What else did he say about it? A. Well, there is not but one there now. He told me I didn't need but one kind of drink. It might as well be a Coca Cola machine. I had a friend selling machines and I bought a box from the Pepsi Cola Company.

Q. Was there ever any discussion concerning cancellation of your lease? A. Mr. Brown just came out one day and said he was going to cancel my lease. I asked why,

and he said it was in the future what happened.

He gave me no reason at all. It said nothing, the letter I got. I got a letter from Mr. Griffin. He didn't give me no reason. Just told me to get out by the 11th at 12:00 o'clock.

Q. When was it that discussions first occurred? Was Mr. Brown the one you learned this from? A. Yes, sir.

Q. How long ago was it that Mr. Brown first mentioned

this to you? A. It was in October I think.

Q. Did he ask you to give up the station then? (4176) A. He tried to get me to sign a paper, a lease, to sell it out then. And I wouldn't do it. I told him I was going to stay there until the day my lease run out.

Q. Did he show you this paper at that time? A. Yes, he showed me a paper. He wanted me to sign it and I

wouldn't sign nothing.

. Q. Did you later receive other notification from the Texas Company about the lease? A. Only Mr. Griffin. I got a letter about four days before the 11th. He gave me a notice to get out and turn over the keys and all that property by 12:00 o'clock the 11th of this month.

Q. When did you receive that? A. About four days

before. On a Wednesday I think it was.

Q. Do you mean before you gave up the station? A. Yes, sir.

Q. Had you received any notice prior to that even? A.

No, sir.

Q. A letter or anything? A. No, sir.

Q. What reason did Mr. Brown give you back there in October as to why he wanted you to sign that paper?

(4177) Q. What was it that he said? A. I. didn't mean the future. I meant the back, two and a half or three years that I had been there, the background.

Q. What did he say about that? A. He didn't say nothing, just, I don't know what it is, but I am cancelling

the lease.

Q. He gave you— A. That is the only word he said.

Q. Was anything said about the housekeeping of the station? Cleanliness? A. Not a word was said about it.

Q. Or the gallonage you were pumping? A. No, sir.

- Q. Was anything said about yourself? A. Not a thing.
- Q. Mr. Scott, do you know whether or not there were any complaints? Had any been brought to your attention from any customers? A. I think I had one complaint in three years. That was a wax job.

Q. What happened in that connection? A. I turned the money back to Mr. Patton and he turned it in (4178) the

office.

Q. How much was involved? A. \$10.00.

Q. Were there any complaints from the Texas Company, or anybody for that matter, about your conduct?

A. Never have said anything to me about it.

Q. Was there anything like gambling going on in the station to your knowledge? A. Never was anything except match for a Coca Cola, maybe on Coca Cola bottles, you know, out of town. That happens anywhere. Never been no dice shot there, no crap shot in the station.

'Q. Mr. Scott, are you a drinking man? A. I take a

drink when I want one.

Q. Have you ever drunk excessively while you were in

operation of the station? A. No, sir.

- Q. Were any complaints brought to your attention concerning customers, that customers may have made in that connection? A. Mostly I try to keep my customers sober and out of the back room, when they were getting carservice. The back room sometimes looked like a bar back there.
- (4179) Q. How long had that type of thing been going on? A. When you run a service station, and you have a customer on the rack and he is going to take a

drink, are you going to let the car down and tell him to get out?

Q. Mr. Scott, did any representative of Texas, Mr. Brown, Mr. Fitts, or anybody, ever say anything to you about this situation? A. Oh, yes. Mr. Fitts talked to me one day. He said, "I won't have any drinking around that station." I said what are you going to do about it? I mean to myself. Take a man in, like I said a few minutes ago, a man comes in and gets his car serviced, he steps in the back room and wants to take a drink of liquor and his car is on the rack, you aren't going to take it down and run him off. I am not. I am in business.

Q. How often did that happen? A. I have one customer, happens to be Sears Roebuck. He drinks a pint of liquor every night. Been doing it for three years. He was a regular customer of mine. I wasn't going to run him out from back there. He didn't stay there but three minutes and he was done. He drinks a half pint every night. Didn't miss a night except Sundays.

Mr. Royall: You weren't open Sundays? The Witness: Yes, I was open Sundays.

# By Mr. Boyd:

Q. As best you can recall it when was it that Mr. Fitts said (4180) something to you about this? A. I guess it was a couple of years ago.

Q. Did he say anything to you after that or since then about it? A. No, sir.

Q. That is the only time? A. Mr. Fitts hadn't been in my station over a year.

Q. Did Mr. Brown or anyone else say anything? A. No. Mr. Brown never mentioned it at all.

Q. Mr. Scott, did you attend any dealer meetings sponsored by the Texas Company? A. I think I missed two the whole time.

#### John D. Scott, for Commission-Cross

Q. How frequently did you attend them? A. Every time they had one. I think I missed two.

Q. How often did they have them? A. I think three or four a year, different meetings. I know I missed one at the Moose Club, a get-together. That was a sales meeting.

Q. At dealer meetings was there ever any TBA representatives there? Sellers of tires, batteries and accessories? A. Yes, sir. Every one I went to had salesmen there.

Q. With what company were they connected? A. Firestone and Goodrich.

Q. Did you ever see any others there besides representatives of those two companies? A. No, sir.

# (4181) Cross-examination by Mr. Royall:

Q. Mr. Scott, you said that you got notice I believe about four days ahead of January 11th about your moving out? Is that right? A. That is when to turn the keys over and the equipment.

Q. When did they give you the notice? A. That was about four days before that. But I got notice from Mr. Brown about four months before that that I was going to lose my lease on that day, that it was going to expire.

Q. You didn't get anything between the four months and four days! A. Around four days before my lease was out I got the letter.

Q. Did you get anything in writing between those two times? A. No, sir.

Q. Will you identify if you can this letter of December 18, and this card which I hand you, and see if you received that letter and signed that card?

#### John D. Scott, for Commission—Cross

(4182) (The documents referred to were marked Respondents' Exhibits 34 and 35 for identification.)

A. I never got this letter here; no, sir, only down here at the bottom.

#### By Mr. Royall:

Q. You just got the bottom of the letter? A. Yes, sir.

Q. You didn't get the top of the letter! A. Let me be sure now. I don't sign my name unless I read it.

Yes, sir-no, sir, I didn't get the 18th.

Q. You got the bottom part of it? A. No, sir, I didn't

get none of it, not the 18th of December.

Q. Didn't you sign a receipt to the Texas Company on December 23 for that letter? A. That is not my writing, sir.

Q. You didn't sign that? A. No, sir. Do you want to see my-

Q. I asked you did you sign it? A. No, sir.

Q. Who was working there with you? A. I had about five men working there.

Q. And your name is Douglas Scott, is it? A. That is

right.

(4183) Q. Who was working there with you at the time? A. I had two boys, one of them named Hicksward, Hawkem, and one named Rose, and Rodenbury. Five white men.

Q. As far as you know, were United States mails running at that time in December 1956? A. No, I don't re-

member.

Mr. Dias: I don't believe the witness understood the question

Hearing Examiner Kolb: Read it. (Question read.)

A. Yes, sir, I believe they was.

#### John D. Scott, for Commission-Cross

#### By Mr. Royall:

Q. Do you know which one, of your employees signed this? A. I think Hawkem, but I don't know whether that is his handwriting or not. I wouldn't say.

Q. Did you turn over to anybody the duty of receiving your mail and acknowledging it? A. They don't usually

receive mail there, special delivery mail.

Q. In other words, if a letter came to you he was supposed to tell you, wasn't he? A. He was supposed to, yes.

Q. By the way, do you happen to be a member of the Georgia Petroleum Retailers Association? A. Ever since it opened up; yes, sir.

(4184) Q. When did you talk with a representative

of that organization about this case?

A. Never have talked to the man about it. This is the only gentleman I ever talked to about it, this gentleman here.

Q. Mr. Boyd! A. Yes.

Q. When was that? A. I don't remember the certain day. I don't remember every day, what number.

Q. Do you remember the month? A. I don't remember when it was.

Q. Was it two months ago? A. I wouldn't say because I don't remember.

Q. Was it three months ago! A. I said I don't remember.

.Q. Was it five years ago? A. I wasn't in business five years ago.

(4185) Q. Was it three years ago? A. I don't remember when it was.

Q. You don't remember whether it was three years ago or when it was! A. No, I don't remember when it was.

# John D. Scott, for Commission-Cross

Q. Who was there when Mr. Boyd talked to you! A. I don't remember that. Me and him went out in the yard and talked; nobody heard us talking.

Q. Who was at the station at that time? A. I imagine the men who we e working. There might have been four

or five customers. I don't remember.

Q. You don't remember whether it was in the Fall of the year, summer or winter? A. It has been a little while back. I don't remember the date.

# (4186) By Mr. Royall:

Q. Do you know whether it was in the Fall of the year or summer!

Mr. Boyd: I will tell you, Counsel, to help the situation. I talked to him—I have the date right here somewhere—on December 19, 1956.

Mr. Royall: Thank you, sir. That is all I want

to know.

# By Mr. Royall:

Q. Didn't you tell Mr. Boyd at the time you talked with him that you had received a notice to get out of the sta-

tion? A. I wouldn't say if I did or not.

Q. You spoke something and a clock. You say they talked to you about that over three years? A. About two and a half years ago when I bought it; around two and a half.

Q. When you put the clock in did you have to take out part of the wall? A. No, sir, put a little bolt in. I paid

for that little piece of material; \$25.

Q. But at the time you took the clock out, you said you took it out at one time and put it back, it showed where it had been? A. I have a piece; the clock slides into a socket.

#### John D. Scott, for Commission—Cross

Q. Couldn't you tell there had been a hole in the wall then! (4187) A. It is still up there, yes. You can tell. But it wasn't in the wall. It was in the enamel. I bought a piece and paid \$25 for it. The old piece is still up there yet.

Q. It is true, is it not, that you were drinking during business hours? A. I took a drink; yes, sir. But I wasn't drinking. Drinking is lots different from taking a drink.

Q. Isn't it also true that a number of people who passed your station, including some that patronized it, would not even permit their wives to go by there? A. No, sir.

Q. I ask you if you don't know that was true of Mr. William B. Day! A. Never had a customer named Day.

Q. William B. Ivy? A. Ivy?

Q. Yes. A. What was his address?

Q. 580 Long Drive. A. He is still trading with me.

Q. I asked you if he didn't tell his wife not to go by your station? A. No. His wife—Mr, Ivy traded with me regular and paid his bill the other day. Came by the house and paid me. Him and his wife both.

(4188) Q. He was with his wife? A. No, she was in the station plen y of times.

Q. But he stopped here? A. No, sir.

Q. Does Mr. Carter trade with you? A. No, sir. He may come in the station once a month.

Q. Isn't that true of him? A. No, sir.

Q. And Mr. Roy R. O'Hearn, do you know him? A. Mr. O'Hearn?

Q. O'Hearn. A. No, sir.

Q. 2877 Haversham Drive. Do you know him? A. I think I know him pretty good because I had to sue him to collect my bill. I am pretty sure I did.

Q. You didn't remember him a minute ago, did you?

A. I had to think. When you said Haversham then I thought who he was.

# John D. Scott, for Commission-Cross

Q. Wasn't the same thing true about his wife? A. No, sir. I never had a woman—I never said a thing to a lady or anything in that station the whole time I was open. I can prove that by hundreds of them. Ninety percent of

my business in the morning was ladies.

Q. I ask you if you didn't say it looked like a barn in the back room? I ask you if your entire station wasn't (4189) filthy and your rest room continued unsanitary? A. No, sir. My rest room wasn't. We tried to keep that clean back there. Every time somebody went back there we tried to throw the bottle out, When they went back there they drink some. In all rest rooms; all stations would have to close up if they didn't.

Q. You are quite frequently away from the station for periods of time? A. I have been away a good bit the last

year.

Q. While you were away you were drinking a little?

A. I wouldn't say. That is my personal business.

Q. Are you familiar with a complaint about your rudeness to customers made in July 1955 by T. W. Whipple?

A. Yes, sir; I am very familiar with that.

Q. And you know there was a complaint made! A. Yes, sir. I gave the money back to Mr. Patton. He turned the money back in. There was nothing rude about it. Just beat me out of a wax job, that is all.

Q. Mr. Patton talked to you about your drinking? A. Mr. Patton never asked me about taking a drink. Just

told me never to let anybody get drunk around there.

Q. You know what he was talking about when he said that? A. It could have been you, it could have been me, it could have been anybody.

#### (4190) Redirect examination

Mr. Boyd: Just one question.

#### By Mr. Boyd:

Q. Mr. Scott, was the matter just mentioned to you, about Mr. T. W. Whipple, was that the one where the wax adjustment was made, the adjustment on the wax job? A. Yes, sir.

Q. Would you tell us the circumstances of that incident? A. She came up and wanted the car washed. We washed it. She came back that afternoon, and the paint was about faded out on it. She told us to just keep it the next day and give it a wax job. The paint was in such bad shape we had to use Simonize cleaner on it and the scratches on the door had rusted. They had been there six or eight months. I mean it showed up. She said we scratched the door.

I gave Mr. Patton \$10, and that was it. There was no argument about it. Only I told her the scratch had been there maybe a year, just like a scratch on it, but it wasn't even rusted around the paint. I gave the \$10 back to Mr. Patton and that was all that was said. I didn't talk to the lady.

I was mad all right but I gave the money back to Mr. Patton.

(4191) Q. Why did you give the money back to Mr. Patton? A. She had a courtesy card and refused to pay it. I refunded the money back to Mr. Patton and he turned it back to the office.

Mr. Boyd: That is all.

# John D. Scott, for Commission—Recross Herman Gilbert, for Commission—Direct

# Recross examination by Mr. Royall:

Q. Since you went in detail, I will ask you'as the car was driving off if one of your colored help didn't say, "That is the third car you have messed up"? A. I don't think I had a colored man working there then. I didn't work niggers.

Q. You have colored men working for you? A. Mighty

few of them.

Q. I ask you if one of them didn't say as the car drove off: "That is the third car you messed up"! A. No, sir, I wouldn't say that

Q. You wouldn't say it is not true? A. I would say it is not true. I never messed up one. That is the only money I ever refunded to anybody.

(4192) HERMAN GILBERT was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

# (4194) Direct examination by Mr. Boyd:

Q. Mr. Gilbert, will you give us your full name? A. Herman Gilbert.

Q. What is your address? A. 947 Stewart Avenue,

Southwest.

Q. Have you been in the service station business? A. Yes, sir.

Q. Are you in the service station business now? A.

Yes, sir.

Q. What type station do you operate presently? A. Cities Service.

## Herman Gilbert, for Commission-Direct.

Q. How long have you had that station? A. It will soon be eleven years.

Q. Have you ever been an operator of a Texas station?
A. Yes, sir.

Q. When? A. From April 15th until October 15, 1955.

Q. In other words, about a year and a half ago? A. This past October is when we—

Q. It was 1956 then? A. 1956; I beg your pardon.

Mr. Royall: It was April 1956? The Witness: April 16 to October 1956.

#### By Mr. Boyd:

Q. Where was this station located? (4195) A. 1686 Jonesboro Road, Southeast.

Q. Where did the negotiations between you and the Texas Company take place with respect to your becoming a lessee of that station? A. I first talked to Mr. Patton about it and then we went out to Doraville and talked to Mr. Fitts. I believe we signed the lease at the station as best I remember now. I think that is right.

Q. You did go to Doraville at one time? A. Yes, I went to Doraville one time.

Q! Was there any discussion by representatives of the Texas Company concerning TBA? A. Well, it was concerning leasing of the station.

Q: Was anything said about the tires, batteries and accessories that you might sell? A. Well, they did tell us that they would expect us to handle Firestone or B. F. Goodrich.

Q. Who told you that? A. Mr. Fitts, I believe,

Q. Did he or anyone else from the Texas Company ever tell you that you could handle any other line of TBA other than Firestone or Goodrich? A. No, sir, they never did tell us we could.

## Herman Gilbert, for Commission-Direct.

Q. Was this a new station that you took over? A. No, sir, it wasn't new. Mr. Dean operated it before (4196) we got it, I believe.

Q. Was there some TBA in it when you took over the station? A. Yes. Firestone was already in it when we

took over.

Q. Which one did you select when you became the lessee? A. We just went on with Firestone. It was already in there and we went on with it.

Q. Did you sell any other brand of TBA at that station?

Tires or batteries? A. No. Tires and batteries, no.

Q. Just in the event there is a misunderstanding: Did you ever sell any on a spot sale basis, anything of that nature? A. Do you mean other than—

Q. Goodrich or Firestone! A. No, we didn't.

Q. What was your supply point for Firestone? A. I believe at Spring and Baker Street.

Q. What kind of place of business is that? A. That is Firestone, their main office I believe, or warehouse, something like that.

Q. While you were lessee, Mr. Gilbert, did you ever attend any dealer meetings? Texaco dealer meetings? A.

Yes, sir; I did.

- Q. Were there any TBA supply representatives there?

  A. Actually I couldn't say about that. I didn't know any of them except the one that called on me. He wasn't there.

  (4197) Whether there was any more there or not I couldn't say.
- Q. Were there any discussions about— A. I don't think so.

Q. (Continuing) —tires and batteries? A. No.

Q. Mr. Gilbert, what was the volume of TBA monthly, average, at that station while you had it? A. It was very small. I don't know just what it would be. It was very small. We didn't sell a lot of tires and batteries.

# Herman Gilbert, for Cammission-Direct.

- Q. You couldn't give us any approximate figure? A Maybe \$500 a month.
- Q. What about the gasoline gallonage? How was that from the time you took it over? A. I guess it averaged about 10,000 for the period of time we were out there.
  - Q. Is that monthly? A. Monthly.
- Q. Had your lease expired when you left the station?

  A. No, sir, it hadn't. It had another six months to go.
- Q. How was it that you left the station before the end of the term? Would you tell us the circumstances? A. Well, I cancelled the lease myself. Texas Company didn't cancel it. They wanted us to stay open from seven o'clock until ten o'clock at night, and I would have to have (4198) another man on the payroll, and I just didn't do business after eight o'clock. They said they wanted it open until ten and I didn't feel like I could do it so I gave my cancellation notice on it.
- Q. Who did you discuss this with, with the Texas Company? A. Well, actually there wasn't much discussing to it. Mr. Fitts just called me up and told me that they had to have it open from seven to ten at night. I didn't feel like I could do it. So I just cancelled, sent them a cancellation notice on it.
- Q. When did this occur, that he wanted you to keep it open until ten o'clock?
- A. I don't know the exact date. It was sometime the first part of September because I believe I mailed in my cancellation notice on the 15th of September, effective October 15, I believe, so it was sometime the first part of September.

#### (4199) By Mr. Boyd:

Q. What time of day was it that Mr. Fitts called you about that? A. It was about 8:30 or 9:00 o'clock one night.

#### Herman Gilbert, for Commission-Cross

- Q. Where were you when he called you? A. I was at home.
- Q. As best you recall it, just what did he say at that time? A. He just said he rode by the station, and "I found it closed up at eight o'clock." I said, "Yes, sir, we did close at eight o'clock." I told him that I had been reading the pumps at eight o'clock and then again at ten to see what we did on those two hours and we just weren't doing anything and I couldn't keep a man out there. And he said "Well, we just must have it kept open until ten o'clock." So the more I figured on it the more I knew I couldn't do it. Then I just gave him cancellation notice on it.
  - Q. Did you try keeping it open awhile? A. Well, yes.
- Q. Until ten o'clock? A. The first four months we were out there we kept it open from seven o'clock in the morning until ten o'clock at night.

# (4200) Cross examination by Mr. Royall:

- Q. Mr. Gilbert, as a matter of fact didn't your gallonage drop in September to 4,000 gallons, from a high you had of 13,000! A. I would like to say this—
- Q. Will you answer my question? Didn't it? A. No, sir, it did not drop to 4,000 gallons.
- Q. I will ask you if the exact amount in September was not 4,110 gallons? A. Could I explain that?
- Q. Sure you can. But I want you to answer. Was that right? A. That was not the amount of gallons I pumped. That is what I want to explain. I only bought that much gas that one month. That is right. But it is not how much I pumped because I had lots of it in the ground.
- Q. How much did you buy the month before that? A. I couldn't say without seeing my books.

#### Herman Gilbert, for Commission-Cross

Mr. Lorenzen: Your Honor, I would like to have (4201) this identified.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

(The document referred to was marked Respondents' Exhibit 36 for identification.)

## By Mr. Royall:

Q. Would this refresh your recollection as to how much gas you bought (handing)? A. No, sir. I don't know that. If I had my books I could tell you better.

Q. The amount you buy and the amount you self averages of course over a short period of time? A: Yes, sir,

over months it does average out.

Q! Over two or three months! A. Yes.

Q. Mr. Gilbert, you reported a conversation about TBA. With whom was that conversation? Who was present? A. Mr. Patton, Mr. Fitts, and my brother-in-law, Mr. Fos-

ter, and myself.

Q. What is the exact language they used, as near as you can recall? A. As I remember it they just told us that we would be expected to handle Firestone or Goodrich products. I think that is as near as I can tell you.

(4202) Q. I believe you were there about six months?

A. I believe we were there six months to the day.

Q. When you went in there there was Firestone, was there not! A. That is right.

Q. Are you a member of the Georgia Petroleum Retailers Association? A. I am.

O. You get their literature! A. I do.

#### By Mr. Royall:

Q. Did you get a communication from the GAPR asking you to "Add fuel to the fire.

Mr. Boyd: I object to the question.

Mr. Royall: Wait a minute. Let me finish first.

#### By Mr. Royall:

Q. (continuing) "Add fuel to the fire and evidence to the file"?

Mr. Boyd: I object to that as being improper. Hearing Examiner Kolb: Objection sustained as (4203) not proper cross-examination, it has nothing to do with the issues of this case whatsoever as to this witness' testimony.

## By Mr. Royall:

Q. Were you not in particularly good health at the time of this cancellation? A. That is true. I developed a little heart ailment about that time.

Q. You gave a figure of \$500° on TBA. Is that what you paid or what you sold it for! A. I would say that is approximately what I sold it for.

(4204) GUY R. SINCLAIR was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

#### Direct examination by Mr. Boyd:

Q. Mr. Sinclair, will you give us your full name? A. Guy R. Sinclair.

Q. With what company are you connected and in what capacity? A. I work for Gordy Tire Company as a commercial salesman.

Q. How long have you been salesman with Gordy Tire Company! A. Six and a half years.

Q. What is your sales territory, Mr. Sinclair? A. I work all over the City of Atlanta, Decatur, Avondale. I

have accounts in different parts of the City.

Q. Do you sell any out of the City or travel out of the City? A. Yes, sir. I travel out one day a week. Every Thursday.

Q. Where is that to? A. I go through Marietta, Acworth, Cartersville, Fairmont, Jasper, Tate, Canton, and

back into Atlanta.

Q. How often do you cover that territory just enumerated? A. Every Thursday.

Q. Once a week? A. Yes, sir,

Q. How many accounts do you have? (4205) A. In total?

Q. Yes, sir. A. Probably 150.

Q. What classes of accounts are they? That is, what business are these accounts engaged in? A. The greatest bulk of my accounts are commercial concerns, such as bakeries, meat packers, motor freight lines.

.Q. What about service stations? A. No, sir. I have

very few service stations.

Q. What percentage of your business would you say is service station business? A. Probably one percent.

Q. Have you ever called on service stations? A. Yes, sir, I have.

Q. When was this? A. I would say off and on for the first six and a half years. I think the first year and a half I called on quite a good deal.

Q. This is service stations of all categories? A. Yes,

sir.

Q. Of all types? A. Yes, sir.

Q. Would that include Texaco stations? A. Yes, sir.

Mr. Royall: Your Honor, we move to strike that (4206) answer. We want, if your Honor sees fit to give it to us, to have a running objection and motion to strike on any matter that occurs before 1952. And may I in that connection call attention of your Honor to the fact that this witness said in effect that he has sold practically no filling stations, or approached them, in the last five years.

May I have a running objection?

Hearing Examiner Kolb: You can have an objection to any testimony prior to 1952. The objection will be overruled.

Proceed.

The Witness: I didn't mean to say—I contact filling stations every Thursday, Mr. Boyd.

#### By Mr. Boyd:

Q. On this trip out of town that you are talking about?

A. Yes, sir.

Q. Do you have any Texaco accounts? A. No, sir, I don't.

Q. Have you ever had any that you sold to? A. Yes, sir. I have sold some of them recapping.

Q. When was this? A. I would say—I have a few Texas accounts now that I sell recapping only to.

Q. Where are they located? A. I have-

Q. How many of them are there? (4207) A. I would say there's only two that I know of. One is in Cartersville.

Q. Would you tell us the name of it! Where is it located in Cartersville! A. I can't tell you the street. I don't know. It is on Route 41, which is the main street going through Cartersville.

Q. This is a Texaco station? A. Yes, sir.

Q. Does the station carry TBA—new tires and batteries? A. Yes, sir.

- Q. What line or lines of tires and batteries does it carry? A. It carries Firestone new tires.
  - Q. Is that true of batteries, too? A. Yes, sir.
- Q. Do you know whether that is a leased station or whether the operator owns it or not? A. No, sir, I don't.
- Q. I don't believe you have given us the name of the station. Would you identify it for us as best you can? A. I don't know—it is run by a man named Harvey.
- Q. You say you sell him some recapping business? A. Off and on I do, yes, sir.
- (4208) Q. You made no effort to sell this station that you referred to? Harvey's. A. No, sir.
  - Q. New tires? A. No, sir.
- Q. Has Mr. Harvey ever offered to buy from you new tires? A. No, sir.
- Q. You said there was another one. What is the next station? A. I wouldn't quote on that because I am not positive about it.
- Q. What about around Atlanta? Can you name any stations here that you called on? Texas stations? A. Yes, sir. I have called on a Texas station on Candler Road just south of Glenwood, run by Doug Scott.
- Q. Did you ever sell him tires and batteries? A. Yes, sir, I did.
- Q. When was this? A. It was I would say roughly three years ago.
  - Q. Did he give you any reason for not buying from you?

Mr. Royall: Objection.

(4209) Hearing Examiner Kolb: Objection overruled.

- A. I sold him tires before he went into this station.
  - Q. Where was he then?

Mr. Royall: I move to strike that answer as not being responsive.

Hearing Examiner Kolb: Denied.

#### By Mr. Boyd:

Q. Go ahead. A. He worked for a bakery here in Atlanta and they purchased tires from us, and he did, too, for his own personal use. So when he opened that station I contacted him about it and he told me that he had already been tied up with B. F. Goodrich.

Mr. Royall: Your Honor, we have an objection to that and a motion to strike.

Mr. Barton: I move to strike.

Hearing Examiner Kolb: Motion to strike will be denied.

#### By Mr. Boyd:

Q. Did you do any recapping business for Mr. Scott? A. No, sir.

Q. What products do you sell primarily for Gordy? What type products? A. New tires, batteries, recapping.

Q. What about accessory items? A. Very few. We sell a few seat covers.

(4210) Q. Do you sell things like waxes and polishes and radiator chemicals, things of that nature? A. No, sir.

Q. Spark plugs A. No, sir.

Q. Filters? Oil filters? A. No, sir.

Mr. Royall: Your Honor, two witnesses for Gordy have so testified. I see no necessity for repeating.

#### By Mr. Boyd:

Q. Are there any other stations in the Atlanta area that you can name for us? A. There is one on Ayondale Road.

-Q. Where? In Atlanta or Decatur? A. It is a Decatur

address. It is between Decatur and Avondale.

Q. Can you give us the name of the operator? A. I can't recall his last name. It is—

Q. Do you know his first name? A. Johnny.

- Q. Can you tell us where on Avondale Road—the number, if you know. A. I don't know how those numbers run there, but it is just about half way between Sam's Crossing and Avondale, Avondale proper, on the south side of the road.
- (4211) Q. Does this station sell new tires and batteries? A. Yes, sir.

Q. What line or lines does it sell? A. B. F. Goodrich.

Q. Have you endeavored to sell him your tires and batteries? A. Yes, sir.

Q. When was this? A. About a year ago.

Q. What if any reason was given for not buying?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. He said that he was tied up with B. F. Goodrich.

Mr. Royall: Motion to strike.

Hearing Examiner Kolb: Motion to strike denied.

#### By Mr. Boyd:

- Q. Do you know whether Johnnie's is a leased station or whether Johnnie owns the station or not? A. No, sir, I don't.
- Q. Mr. Sinclair, how many Texaco stations would you say are in the area in which you work? A. I wouldn't have any way of estimating that. I wouldn't even hazard a guess on it.

- Q. Have you called on these stations other than the ones that you have named, at various times?
- (4212) A. I don't call on stations here in town any more.

#### By Mr. Boyd:

Q. Have you ever done so? A. Yes, sir.

Q. When? A. I would say probably up until two or three years ago.

Q. Mr. Sinclair, do you work on a salary or commis-

sion? A. I work on a commission.

Q. What is that based on? A. It is based on a percentage of sales, and, of course, the profit at which you sell him.

CLAUDE M. CHAMBERS was called as a witness for the Commission, and, having been first duly sworn, was examined and testified as follows:

# (4213) Direct examination by Mr. Boyd:

Q. Mr. Chambers, will you give us your full name? A. Claude M. Chambers.

Q. Until the first of this year with what company were you connected? A. Cooper Tire and Rubber Company.

Q. Where was that located? A. 684 Spring Street, here in Atlanta.

Q. What was your position? A. I was the branch manager.

Q. How long had you held that position? A. Approxi-

mately two years.

Q. What business were you in prior to that time? A. I was with Cooper but as a salesman.

Q. In that position, Mr. Chambers, would you describe your duties in connection with salesmen? A. We have out of the Atlanta branch five salesmen directly on Cooper's payroll, and we have one commission salesman, more or less to speak of, on his own. My duties was running the branch office, and working with my salesmen.

Q. Did you ever travel with these salesmen? A. Yes,

sir.

Q. How frequently did you travel with them? A. I averaged about every fifth week with each man. In other (4214) words, I was trying to be with one of the men every week.

Q. When you were with them, what did you do? A. We called on service stations, tire shops, recap shops, any one that might be able to buy tires and repair materials.

Q. What products did Cooper sell? A. They sold tires,

tubes, and repair materials.

- Q. What about batteries? A. A few batteries. Here, of course, they sold batteries. They have batteries.
  - Q. What was the brand of batteries? A. Cooper.
  - Q. Did the firm engage in any recapping? A. Who?

Q. Cooper, did it do any recapping? A. No, sir.

Q. What territory did these five salesmen cover! A. Portions of Alabama, all except around the Mobile area; we didn't work out of Atlanta. Eastern Tennessee, from Chattanooga over. All of Florida, and all of Georgia.

Q. Will you tell us the names of the five salesmen?

A. Mr. Jack McKinney; Mr. Fred Crawford.

Q. What territory did Mr. Crawford cover, if I may interrupt you. A. He covered portions of northern Florida and western Florida, the southern portion of Alabama, and the southern (4215) portion of Georgia.

Q. Name the other three. A. Mr. H. L. Chastain, Mr. C. J. MacManus, and we had a boy, Terry, in Atlanta, who wasn't a full-time salesman, and Mr. Warren Rathfield.

Six. Terry was just a part-time salesman here in the Atlanta area.

Q. About what was the annual volume of business while you were the manager of Cooper from 1954 to '56? A. In . 1956 it was running about \$1,300,000 in this particular territory, and in 1955 it was a little over \$900,000. In 1954 it was around a half million dollars.

Q. What percentage of that business was done with service stations? A. I haven't broken it down. I would

say roughly 10 percent.

Q. Could you give us some idea as to how much was done with Texas stations? A. No. It would be rough, but out of 10 percent it would be a guess of not over one or two percent.

- Q. Do you recall any instances in which you called on Texas service stations? A. Yes, sir. One of the latest instances was in Enterprize, Alabama, Wayne Hickman's Texaco.
- (4216) Q. When was this? A. It was, I believe, around October.

Q. 19561 A. Yes.

Q. Do you know whether Mr. Hickman leases that station or whether he owns it? A. It was a leased station I think.

Q. Did he sell tires and batteries? A. Yes, sir.

Q. Were you there? At the station? A. I have been there, yes.

Q. What line of tires and batteries did he have on dis-

play! A. He had Goodrich.

- Q. Was Cooper doing business with him before October, 1956! A. No.
- Q. Who was with you when you were there? A. Mr. Fred Crawford.

Q. What happened while you were there? A. Mr. Crawford had made contact with him previously. While I was there we signed him up with Cooper for approximately \$2,800, including tax.

Q. For what? A. Tires and tubes. Mostly tires.

Q. Were the tires shipped to him? A. Yes.

(4217) Q. What happened after that? A. I would say within the month of November—I don't have the dates; it is in my office, my former office—Mr. Hickman, whether he lost his lease or was put out, I don't know, the next thing I knew he was out of the station and a new owner had taken over.

(4218) Q. What happened to the tires, Mr. Chambers?

A. The tires was returned, anyway.

Q. Did you have any discussions with the new dealer?
A. No.

Q. Do you know who the new dealer was? A. No, I don't.

(4221) Q. Do those documents refresh your recollection as to the names of some Texaco stations that you called on in Gainesville? A. I think this Harry's is the only one that I can say that I actually called on.

Q. When was this?

Hearing Examiner Kolb: Is that the one that has been testified to already?

Mr. Boyd: No, sir.

Mr. Royall: He said he talked to Harry's.

Mr. Boyd: He hasn't testified other than that he had talked to Harry.

Hearing Examiner Kolb: All right,

A. It was sometime after June.

#### By Mr. Boyd:

Q. What year? A. 1956. The exact month I couldn't say.

Q. Does Mr. Harry's station in Gainesville sell new

tires? (4222) A. Yes.

Q. You were there? A. Yes.

Q. Did you see what tires he had on display! A. I know he had tires on display. I couldn't tell you whose

tires they were.

Q. Were you there at the time that report—what is the date of it? A. This is the 10th. I couldn't say whether I was there on this particular day or not. But I have been there some times after June. This was in April.

Q. Did you make any efforts to sell Cooper tires to

Harry's when you were there? A. Yes, sir.

Q. What happened! A. We was-

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

A. We was unable to sell him any tires.

#### By Mr. Boyd:

Q. What if anything did he say about it?

Mr. Royall: Objection.

Hearing Examiner Kolb: Overruled.

A. He just said he wasn't in a position to take on Cooper tires, at this particular time, as much as he would like to.

(4226) H. ARP KOEHLER was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

# Direct examination by Mr. Boyd:

- Q. Mr. Koehler, will you give us your full name and present home address? A. My name is H. Arpin Koehler. I live at 167 Dunwoodie Lane.
- Q. Is that Atlanta? A. North Atlanta, 19. That is in the incorporated area of North Atlanta.
- Q. Mr. Koehler, have you ever been in the service station business? A. Yes, sir.
- Q. When were you in the service station business? A. I was in the service station business several times. The last time was in 1955, in the Atlanta area.
- Q. Where was that station located and what kind of station was it? (4227) A. The station was located on Roswell Road at Belle Isle and it was a Texas Company station.
- Q. Would that address be 4980 Roswell Road? A. I believe that was the address, yes.
- Q. Do you have your lease? A. I have a copy of the lease, I believe.
  - Q. May I see it?

(The witness produced a document.)

Q. Do you by any chance have a copy of the termination agreement with you? A. No, sir, I do not.

Mr. Royall: Here is one for you, if you want it. Mr. Boyd: I think he can tell us the date of it. The main thing is to establish when it was.

Mr. Royall: You are not going to put it in?

Mr. Boyd: I believe not.

Mr. Royall: I wonder for the reason for asking for it.

Mr. Boyd: I wanted his copy.

#### By Mr. Boyd:

Q. Did you have a copy on it? A. I imagine so. I remember the termination was the sale of the products and the inventory and the equipment owned by me to another man who was taking over the operation.

Mr. Boyd: Off the record.
(4228) (Discussion off the record)

Mr. Boyd: Your Honor, I ask that there be marked for identification as Commission Exhibit 175 a letter on the stationery of the Texas Company dated February 25, 1955, and bearing the signature or reasonable facsimile thereof of W. H. Griffin, Jr., I believe. The letter is addressed to Mr. H. A. Koehler.

As Commission Exhibit 176-A and B, copy of a lease between Mr. Koehler and the Texas Company dated February 9, 1955.

As Commission Exhibit 177, Texas form S-402 5/52/30M. This form is made out and addressed to the Texas Company and is properly completed and signed by Mr. Koehler.

As Commission Exhibit 178, copy of a letter dated February 25, 1955, on the stationery of the Texas Company and bearing the reasonable facsimile of the signatures of W. H. Griffin, Jr., and addressed to Mr. H. A. Koehler.

And as Commission Exhibit 179-A and B, an agreement of sale between the Texas Company and H. A. Koehler, dated February 9, 1955.

As Commission Exhibit 180-A and B, a document entitled "Selling Schedule, Motor Lubricants, Dealer Prices, Effective June 1, 1954."

Mr. Royall: Let me see them. I may have no

objection to them being introduced.

(4229) (The documents referred to were marked Commission's Exhibits 175, 176-A and B, 177, 178, 179-A and B, 180-A and B for identification.)

Mr. Royall: No objection to the admission of

the papers.

Mr. Boyd: I offer them in evidence.

Hearing Examiner Kolb: The documents will be received in evidence as Commission Exhibits 175 through 180-B.

(The documents heretofore marked Commission's Exhibits 175, 176-A and B, 177, 178, 179-A and B, and 180-A and B for identification, were received in evidence.)

# By Mr. Boyd:

Q. Mr. Koehler, had there been any operator of this station before you took it over? A. Not to my knowledge,

Q. Was it so far as you know a new station? A. So

far as I knew it was a new station, just built.

Q. With whom did you deal with the Texas Company in obtaining that station and negotiating the lease? A. I went to the sometime previous to February I believe I went to the Texas Company branch in Doraville.

Q. Doraville, Georgia? A. Doraville, Georgia. And talked to Mr. Fitts regarding the possibilities of leasing

or obtaining a station to operate?

(4230) Q. Did you see anybody else at that time, besides Mr. Fitts? A. I don't know that at that particular time that I did. I may have. Subsequent to that time I had various conversations with Mr. Fitts and with a gen-

tleman—I am awfully sorry, I am awfully sorry I should know his name but I don't—he preceded Mr. Joe Martin as the representative for that area for the Texas Company.

Mr. Fitts: That was Mr. Gunter?
The Witness: Mr. Gunter, yes; that is right.

#### By Mr. Boyd:

Q. Did you talk to those gentlemen any more before you

signed the lease? A. Oh, yes.

Q. Where did these other discussions take place? The same place? A. They took place in various places. I mean by that they took place at the Doraville branch of the Texas Company and in my home, and at the station site.

Q. In the course of those discussions and before the lease was signed was anything said by the Texas repre-

sentatives concerning TBA? A. Yes.

Q. Would you tell us what was said in that respect? A. To the best of my—

Mr. Royall: Would you mind identifying the person?

#### (4231) By Mr. Boyd:

Q. And tell us whom you were talking with, in the Texas Company? A. In talking with Mr. Gunter as the representative of the company, who was I believe assigned to the territory that station was in, and who would be the contact between the company and the operation of the station, in several discussions about the station and its operation, the products that it would handle, the TBA question was brought up and I was told that I could have either a choice of the B. F. Goodrich line or the Firestone tire and rubber line.

Q. Mr. Koehler, was there any discussion? You say there was some discussion at your home. Was the TBA

question discussed with you at your home? A. Yes, quite thoroughly. They had film strips and so forth as a new dealer going in. They showed me several, I guess you would call them educational helps in the operation to train me or to help me become an operator of the station. And in these film strips they showed the general operation of the station; that is, the station with pumps and the man doing various jobs on lubrication and so forth and so on, and the parts that the TBA played in the structure of the sales.

Along with those strips we would discuss the TBA and

what a part it would play in the-

(4232) Q. Were these film strips shown to you at your home? A. Some of them were shown there and some later on I believe were shown at the station. I think that there were two or three other operators who were opening at about the same time and saw one or two films—one film anyway that I remember out at that station.

Q. Did those films show any brand of TBA in there?

A. Yes. To my memory they did.

Q. Will you tell us what that was? A. They showed to my memory the B. F. Goodrich and the Firestone Tire and Rubber Company.

Q. Tires, batteries and accessories? A. Yes, sir.

Q. As a result of those discussions, Mr. Koehler, did you take one of those lines of TBA? A. I did.

Mr. Barton: Object. Mr. Royall: Object.

Hearing Examiner Kolb: The objection will be overruled.

#### By Mr. Boyd:

Q. Which one did you take? A. I chose the B. F. Good-rich line.

Q. When did you get your stock of Goodrich TBA for the station? (4233) A. Almost immediately with the time that I got my stock of Texas products. I mean it may have taken a period of a few days or so to get it all in. I don't remember exactly.

Q. You had it when you opened? A. Prior to the opening of the station we had the station stocked pretty well with the same amount of inventory that I had at the time I

sold out.

Q. Where was the supply point from where you got the TBA? Goodrich TBA? A. I believe, if I am not mistaken, that the merchandise that I ordered was delivered from the B. F. Goodrich store in Atlanta on Courtland Street.

Q. Did the Goodrich representative come around to see

you? A. Yes, regularly.

Q. I mean before you opened the station did he come around to see you? A. Oh, yes. The Goodrich representative came to see me and so did the Firestone representative.

Q. Where did they see you? Where did the Goodrich

representative see you! A. I don't remember, sir.

Q. Was there anyone else with him when he came? A. I.

don't remember that, sir.

- Q. Did any other sellers have TBA products call on you after you opened the station? Other than Goodrich or Firestone? (4234) A. Yes. I would say that a number of them called on me.
- Q. Did you buy any products from any of these people who came in to see you? This is right after the station opened. A. Might I ask a question?

Q. Sir! A. I don't understand your question.

Q. Did you buy anything from any of these other people who came in to sell you? That is what I am asking you,

#### H. Arpin Koehler, for Commission-Direct

Shortly after you opened? A. No, sir, not shortly after I opened I didn't.

Q. Were you ever told by any representative of the Texas Company that you could handle any other line of TBA other than Firestone or Goodrich! A. No.

Q. I say did you ever buy any tires or batteries from any source other than Goodrich while you were in the station? A. I bought some batteries from another company.

- Q. What kind of batteries were they? A. I would have to check the invoice. It was an unknown, (4235) not a major brand. It was a battery that sold for a good deal less than the cheapest Goodrich battery I had, or that was available to me from the Goodrich line at that time.
- Q. Did you display those batteries openly in your station? A. No, sir.
- Q. Where did you keep them? A. I kept them back in my storeroom.
- Q. What about tires? Did you buy any tires other than the Goodrich tires; that is, from some other source? A. I never bought any tires from anyone other than Goodrich. I bought some recapped service, or recapping. I don't know whether you would qualify them as tires or not.
- Q. Would this be where the customer brought a tire in to be recapped, or did you buy a recapped tire? Which was it? A. I did both. I had customers' tires recapped and I also, in several cases, because the customer's tire when it was sent down proved to have a defect that prevented it from being recapped, bought for that customer a carcass, and the recap.
- Q. Did you have any recapping done with Goodrich?

  A. Yes, quite a bit.
- Q. Did you have any recapping done with any other recapper? A. Yes. I had some done with a man who was very close to the station.

## H. Arpin Koehler, for Commission-Direct

Q. Did you ever have any discussions with anyone with the (4236) Texas Company concerning the recapping, other than that with Goodrich? A. Yes. There was a dis-

Q. Tell us as best you can, Mr. Koehler, about when it was that the discussion occurred, and with whom? A. Well, it was sometime after the station had been in operation. By

that I mean-

Q. About how long would you say! A. It was sometime along during the summer of that year, about four or five months after the station was in operation when I had occasion to have some recapping done from this man who was close to the station. To my memory Mr. Martin, the representative of the Texas Company, either was in the station at the time a delivery was being made or came there or was there shortly after a delivery had been made. At any rate, the delivered recap job was in its—I wouldn't say exposed, I mean it was there to be seen by anybody that did come, and he asked me where I had it done. I believe I told him that I had had it done by this man not too far from the station. He told me then that I should get my recapping done by Goodrich.

Q. Were there ever any discussions with any representatives of the Texas Company concerning these batteries that you had in the backroom? A. Not to my memory.

(4237) Q. Why did you have them in the backroom?

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

#### By Mr. Boyd:

Q. You may answer. A. Well, I was a franchised Goodrich dealer and my main line as far as I was concerned was the Goodrich line. The reason that I bought the other batteries was because at that time the Goodrich line did not

## H. Arpin Koehler, for Commission-Direct

have a low-priced battery that could meet that competition. And I did have some calls from customers for a very low-priced battery. In my estimation I wasn't purchasing or selling that line. I mean I wasn't offering that to my customers as an exhibited item.

Q. Mr. Koehler, did you attend any Texaco dealer meetings? A. Yes. I attended one that I am sure of. I think that I attended another one but I wouldn't be sure of that. I remember one very distinctly; yes, sir.

Q. Were there any representatives of Goodrich or Fire-

stone at the meeting? A. Yes, sir.

Q. Were there any representatives of any other sellers of TBA products at the meeting? A. Not to my knowledge.

Q. Were there any discussions at the meetings concerning Goodrich or Firestone TBA! (4238) A. As far as I remember both Firestone and Goodrich had displays of their TBA items at this meeting.

Q. How frequently were these meetings held? A. That I wouldn't know, sir. I mean if you will check previous there I only operated this station from sometime in February to the first of November. So not being with them an entire year I wouldn't know how frequently they held them. All I know is that I went to one.

Q. What approximately was your TBA volume monthly? A. I wouldn't remember. I didn't bring any records with me. I don't remember that.

Q. What about your gasoline gallonage? Could you give me some idea of that? A. It would be hard to establish an average because being a new station the quantity sold varied. It started off naturally at nothing and went up to I believe the greatest amount of gasoline purchased from the Texas Company in any one month was approximately 13, around 13,000 gallons.

Q. Why did you give up the station? A. Well, I didn't feel that the station was turning out to be as remunerative

## H. Arpin Koehler, for Commission-Cross

as I had anticipated. And I don't believe that the Texas Company felt that the station was returning them the renumeration that they had expected. So I think it was more or less of a mutual agreement that we would terminate the lease and sell to another operator.

(4239) Q. Did you have an inventory of TBA on hand

when you gave up the station? A. I did.

Q. What happened to it? A. It was sold to the gentleman who bought out all the rest of my stock and my equipment and took over the operation of the station.

Q. Who was he? If you know? A. I should remember it but I don't. I am sorry. I have a copy of the bill of sale at home and a copy of the inventory made.

Q. Mr. Koehler, how much did it cost you to go in busi-

ness as a lessee of that station?

Mr. Royall: Objection.

. Hearing Examiner Kolb: Overruled.

#### ·A. Do you mean for the

## By Mr. Boyd:

Q. For everything. A. I would say somewhere in the vicinity of \$3500.

Q. How much of that was involved in the original outlay for TBA merchandise? A. I don't remember. I have the original invoices home and the total statement. I would approximate it at around probably \$800 to \$1,000.

## (4240) Cross examination by Mr. Royall:

Q. You spoke of a conversation with Mr. Gunter. Was anybody else there? A. At what time?

Q. I think the one you talked about with him was when he was talking to you about getting the station. Am I right

#### H. Arpin Koehler, for Commission-Cross

about that? Didn't you have a conversation with him? A. Well, I had a good many conversations with the Texas Company, with Mr. Fitts, and believe with Mr. Fitts and Mr. Gunter, and I believe with Mr. Gunter alone at different times.

Q. Was anybody else present at any of those conversations, from the Texas Company! I am just trying to get the names! A. I don't really remember.

Q. You don't remember anybody else being present except those two, some of them at one time, some another, and sometimes both of them? Is that right? A. That to the best of my memory is right.

Q. Goodrich tires were a well-known nationally advertised brand sold throughout the country? A. To my knowledge; yes, sir.

Q. And they were one of the leading tire manufacturers and carried prestige just like a leading brand of gasoline? (4241) A. Yes, sir.

## Cross-examination by Mr. Barton:

Q. When you were working for Lockheed you knew Mr. Lark, was it? A. Yes.

Q. Of the Goodrich Company! A. I knew Mr. Marvin Lark, yes.

Q. Didn't you buy some Goodrich tires while you were working with Lockheed in their purchasing department?

A. No, sir. I didn't buy any Goodrich tires.

Q. You were acquainted with Mr. Lark, though? A. Yes.

Q. And he was with the Goodrich Company? A. That is right.

Q. I think you said that it was these Sheffield batteries that you were handling? A. I believe it was. I am not sure.

## H. Arpin Koehler, for Commission-Cross

- Q. And they sold at a lower price than the lowestpriced Goodrich battery which was in the line? A. At that time.
- Q. And you made more money on a resale of a Goodrich battery than you did on a Sheffield battery, I suppose?

Mr. Boyd: Object to that. Hearing Examiner Kolb: Overruled.

(4242) A. Depending on the battery:

#### By Mr. Barton:

Q. Pardon? A. Depending on the size and price of the battery.

Q. So as the price was lower you would have less margin? A. Less margin.

Mr. Barton: It is stipulated that Van Duzen Tire Company was an independent Goodrich distributor in the city of Atlanta, supplying, among others, Texaco service stations from April 1953 until April 1954, at which time the Van Duzen Tire Company went out of business and the present supply point through the B. F. Goodrich store was established. Prior to that time there was a factory—a branch operation—and in April 1953 Van Duzen Tire Company, which had prior to that time been a distributor of oil I believe, took on the Goodrich tires, but wasn't interested in remaining in the tire business after April 1954.

## Abe Goldstein, for Commission—Direct

(4243) ABE GOLDSTEIN was called as a witness for the Commission, and, having been first duly sworn, was examined and testified as follows:

## Direct examination by Mr. Boyd:

Q. Mr. Goldstein, will you give us your full name and business please. A. Abe Goldstein, Prior Tire Company.

Q. Where is it located? A. At the corner of Peachtree

and Pine Street

Q. Atlanta! A. Atlanta, Georgia.

Q. What is your position? A. Partner in the firm with my son and son-in-law.

Q. How long has the firm been in business? A. 37 years.

Q. What is the business of Prior Tire Company! A. It is a wholesale and retail tire, recapping, gasoline and oll business, and some appliances.

Q. Do you sell accessories, items like chemicals? A. No.

(4244). Q. Spark plugs, batteries? A. Some spark plugs. Batteries, yes.

Q. What brand of tires does your firm sell! A. Hood tires.

Q. How long have you sold Hood tires! A. We have sold them since we have been in business—37 years.

Q. What brand of batteries? A. Exide batteries.

Q. Mr. Goldstein, who manufactures Hood tires? A. They are manufactured by B. F. Goodrich Rubber Company, Akron Ohio.

Q. Is there some division of that company that manufactures those tires? A. Known as the Associated Lines

Division of the B. F. Goodrich Company.

Q. What is the trading area of your company? A. We cover most of the State of Georgia. Practically all of Georgia.

Q. Do you get into South Carolina? A. Very little. Into

the edges of South Carolina.

## Abe Goldstein, for Commission-Direct

Q. How many salesmen does the firm employ? A. It employs about ten or 12. Probably about 12.

Q. Do they travel the whole area? Are some of them City salesmen? (4245) A. Some City salesmen and some

salesmen on the road.

Q. With what classes of customers does the firm do business? A. It does business with filling stations, car dealers, some garages, commercial houses that use trucks, fleet operators, motor freight lines. All type of customers of passenger and truck tires.

Q. What percentage of your business would you say is done with service stations of all kinds? A. I would estimate that sales through direct service stations would run about

60 percent.

Q. Would that be new tires, recapping and batteries?

A. That's right.

Q. Could you give us some idea of the approximate amount of business that your company does with Texas service stations? A. It is very little. I don't know of any particular accounts that we have with Texas service stations. In fact, I don't know of any that we've got that handles Texas, that are Texas-owned service stations. In fact, I don't know of any. Or Texas-controlled. We just don't—my men may be working some but I don't know it.

Mr. Royall: Your Honor, we move to strike the word "controlled."

Hearing Examiner Kolb: The motion will be denied.

## By Mr. Boyd:

Q. Do you have any idea how many Texaco service stations are (4246) in the area in which your firm does business? A. No, sir, I do not.

#### · Abe Goldstein, for Commission—Cross

Q. Has the firm ever done business with Texas stations? A. I couldn't answer that. Whether we have ever done business with Texas stations. I merely could say that at the present time I do not know of any Texas leased stations that we are doing business with. Our men may be doing some business with some that handle Texas gas through their own stations, but a leased-operated station I do not know of any that we are selling.

Mr. Boyd: That concludes the direct examination.

#### Cross examination by Mr. Barton:

Q. Mr. Goldstein, your tire business has grown consistently in the past ten years, hasn't it? A. Yes, sir.

Q. What would you estimate was the degree of growth

during that period? A. In the past ten years?

Q. Yes. Say from 1948 on. A. I would say we have probably had a 40 percent increase.

Q. Hasn't it been more than that, sir? A. Possibly. I

haven't got the figures. I am going from memory.

Q. Wouldn't it be more in the line of around a hundred percent (4247) increase between 1948 and 1957, or 150 percent? A. No, I wouldn't think so. It might be 50 or 60, but I don't think there is any 150 percent. I am quite sure of that.

Q. You have a number of very strong competitors in the tire business in this area, don't you? A. Yes, sir.

Q. Among them are the Duke Tire Company? A. Yes, sir.

Q. And the Edwards-Warren Tire Company? A. Well, I don't come in contact with Edwards-Warren Tire Company.

Q. Do you come in contact quite a bit with Gordy Tire

'Company' A. Yes.

## Abe Goldstein, for Commission-Cross

Q. They solicit service stations as much or more than you do? A. About on the same basis.

Q. Same general basis! A. Same general basis.

Q. And the Riddick Tire Company is also engaged in the solicitation of service stations? A. I don't know what territory they cover. We don't come in contact with them very much.

Q. Of course, you have competition from Goodyear,

Firestone (4248) and B. F. Goodrich? A. Yes.

Q. As well as U. S. Royal? A. That's right. As well as oil companies.

Q. And a number of others? A. A number of oil com-

panies.

Q. What percentage of your business is in recapping?

A. The percentage to sales?

Q. That's right. A. About 20 percent.

Q. And of course those recap tires are sold as part of the tire market, aren't they? A. Yes.

Mr. Barton: I don't have anything further.

#### By Mr. Royall:

Q. Mr. Goldstein, do you have the exclusive on Hood tires? A. Yes, sir.

Q. You sell no other tires? A. No other tires.

Q. They sell no one else in your territory? A. Correct.

Q. Do you think possibly if I were to call the name of one or two stations it might come to your mind that you sell them? Or would your salesmen know about that? A. Possibly I might know. Most sales clear through my office.

(4249) Q. Just for the purpose of perhaps refreshing your recollection: Do you remember the A. G. Killingsworth station at 2830 Peachtree Road? A. We have sold

them some batteries only.

#### Abe Goldstein, for Commission-Cross

- Q. Sold them some Exide batteries? A. Batteries, yes, sir.
- Q. Do you remember Mr. C. A. Hughes! 1230 DeKalb Avenue. A. No, sir. Don't ever recall selling them anything.
- Q. Who would cover the territory of 1230 DeKalb Avenue? A. Mr. Price.
- Q. Do you remember Dave Lafkowitz and Al Weingarten? A. Yes, sir, we do business with them. But I always considered them an independent operator, and they lease their own station.
  - Q. Do you sell Richard and Earl Porter? A. No, sir.
  - Q. Who would cover 327 Marietta Street? A. Mr. Price.
- Q. Do you happen to know that in the case of Mr. Killingsworth that in the classified telephone directory, under the listing of "Exide batteries" it carries not only Mr. Killingsworth's station and address but also shows in the same box that you are—the Prior Tire Company, is the wholesaler? A. That's right. We sell Killingsworth batteries.
- Q. And you have seen this in the 'phone book? (4250) A. I haven't seen it but I know that their retail outlets are listed in there. I don't question that. I admit that, that we sell Killingsworth batteries.

I asked with specific reference to tires when I spoke about—I didn't have specific reference to recapping or batteries. If I didn't make it clear I would like to.

Q. I understood.

And would it refresh your recollection to see this 'phone book to see if it is listed publicly in the book (handing)?

A. Yes. I have said that I sell them batteries.

- Q. I understand. A. It is listed there.
- Q. And it is in the 'phone book? A. Yes, it is in the 'phone book.

#### Abe Goldstein, for Commission-Redirect

Q. Isn't it also true that there are only five service stations in Atlanta listed in the phone book for Exide! Or did you observe that! A. I imagine that is correct. But that doesn't mean that there are only five that handle them. It means that there are only five who are willing to pay for their own listings.

Q. Do you have to pay part of it, too? A. No. We have to pay only for the ad part of it, the top part.

Q. That is about half of it, isn't it? A. Yes, sir.

(4251) Mr. Royall: That is all.

## Redirect examination by Mr. Boyd:

Q. Mr. Goldstein, with reference to the matter of the increase in business that was asked you on cross-examination, would that be a dollar-wise increase that you were referring to? A. Dollar-wise, yes, sir.

Q. How do prices of tires today compare with prices back in 1948? A. I would say that they are up, my gen-

eral guess would be, about 18 or 20 percent.

Q. With reference to competitors Mr. Barton was asking you about, he named a number of them. Then you mentioned that there were a number of oil company competitors. Just what did you mean by that, sixt

#### (4252) By Mr. Boyd:

Q. Answer the other question. A. I had reference to companies like Pure, Gulf, and Amoco, that also produce a tire that sells through their stations; that they are also strong competitors in the field that we operate in.

Q. Some inquiry was made of you concerning Dave Lafkowitz' Texas service station. Do you know whether or not Mr. Lafkowitz owns that station or whether he leases

## Abe Goldstein, for Commission-Recross William B. Price, for Commission-Direct

it from the Texas Company? A. My understanding is, if you please, that he leases it from the owner and-

Q. You mean the owner of the property? A. Yes.

Q. Go ahead. A. And we have a sign out in front of the place, a big neon sign, and he does automotive repair work and sells gas and oil and Hood tires, Exide batteries:

Q. What kind of sign? A. Hood sign, a big neon Hood sign. And it has been generally understood that he controls his own location. And therefore he can handle any kind of product that he elects to.

## (4253) Recross-examination by Mr. Royall:

Q. Don't you know also that Mr. Killingsworth has an Exide sign in his main salesroom? A. I have never been in his salesroom. I don't know.

WILLIAM B. PRICE was called as a witness for the Commission, and, having been first duly sworn, was examined and testified as follows:

## Direct examination by Mr. Boyd:

Q. Mr. Price, will you give us your full name and business connection and position? A. William B. Price, Prior Tire Company, sales manager of the salesmen.

(4254) Q. How long have you been connected with

Prior Tire Company? A. Thirty-six years.

Q. What is your sales territory, Mr. Price? A. Principally around Atlanta, DeKalb and Fulton Counties, and Cobb. Three counties that I go myself.

Q. What classes of customers do you call on? A. Mostly commercial accounts. There are some dealers, in

dividuals.

#### William B. Price, for Commission-Direct

Q. When you say dealers, what kind of dealers do you mean? A. Filling stations, garages. Anywhere I can sell tires and batteries and recapping. New tires, batteries and recapping.

Q. Mr. Price, have you ever sold tires, Hood tires, to a Texaco station located at 1238 DeKalb Avenue, Atlanta? A. When it was run by Green and Presley. Two boys who

ran it then. When they first built it.

Q. Was it a new station when they took it over? A. I sold them for years, in a dilapidated station they had there. They did such a good job that Texas Company agreed to build them a \$30,000 station.

Q. Would you tell us about when that was that you sold them? Over what period? A. Up until—I imagine they left there four or five years ago. They probably traded with me from the time that they started in big. I would say in the neighborhood of six or seven years anyhow they traded me.

(4255) Q. Did they ever cease trading with you? A. Practically, yes. Just about nil.

Q. In that respect, would you tell us what happened?

Mr. Royall: Objection. Hearing Examiner Kolb: Objection overruled.

A. Green and Presley called me one day to come out there, and they told me that they were figuring on buying the property and building their own station. They said the Texas Company told them they would invest around \$30,000 in building them a master station but they would be expected to handle all Texas products plus Firestone, and asked me what did I think about it.

I told them. That is, if they could get a station built for around \$30,000, if Texaco would do it, I would advise them to do it and then to do the best they could with me

## William B. Price, for Commission-Direct

afterwards. In other words, bootleg what tires they could from me on Hood tires.

Mr. Royall: Motion to strike, your Honor, on the ground it embraces double hearsay as to anything that they said that the Texas Company said.

Hearing Examiner Kolb: Read the answer.

(Answer read.)

Hearing Examiner Kolb: Motion to strike denied.

#### By Mr. Boyd:

- Q. Was a new station built? (4256) A. It was.
- Q. Where was it built? A. On the same location.
- Q. At the same place? A. Yes.
- Q. Did you sell them any tires after that? A. Yes. They would buy a few tires from me, and they couldn't display them in the windows or anything. They had customers who wanted my tires and they would call up and get them and do it on the sly the best way they could.

Mr. Royall: Motion to strike, your Honor, on the ground that it is opinion and hearsay. It involves transactions between the station and Texas, of which he was not a party and as to which he had no knowledge.

Hearing Examiner Kolb: The objection as stated will be overruled.

Motion to strike denied.

#### By Mr. Boyd:

Q. After the new station was built did you ever see any Hood tires on display in it? A. No. I would like to add to that. None was displayed in the windows like the Firestone, the tire that they had at that time. They changed eventually to Goodrich:

## William B. Price, for Commission—Direct

Q. Are Green and Presley still operating that station?
A. No.

#### (4258) By Mr. Boyd:

- Q. Mr. Price, you mentioned Goodyear and Goodrich. Which is it? A. Goodrich.
  - Q. Not Goodyear! A. Not Goodyear.
- Q. Did the station after handling Firestone have Goodrich tires on sale and display at that station? A. Yes.
- Q. Mr. Price, how many Texas service stations do you sell? A. Very, very few.
- Q. Could you tell us how many there are, and who they are? A. That was the best Texas station I had, was Green Presley. Of course, I worked filling stations and commercial accounts anywhere I can sell tires. But I have quite a few dealers, filling station, owning garages, selling tires. They mentioned here Killingsworth, which is a Texas station.
  - Q. Where is that located? A. On Peachtree Road.
- Q. 2830 Peachtree Road, Northeast? A. That is about the number.
- Q. All right, sir. A. At one time Bert Miller sold my batteries for years and years and years. That is Exide batteries.
- (4259) Q. Tell us who Mr. Miller is? A. He was the Exide dealer in Buckhead for years. He did a big Exide business for me. When he folded up and another concern took over then we got Killingsworth to begin to sell some batteries for us, because there were so many people in the Buckhead district wanted Exide batteries. I presume it was the reason he put a few in. And he does sell a few, very few now, Exide batteries. But mostly it is Firestone and Firestone tires that he sells. Firestone batteries and tires.

#### William B. Price, for Commission—Cross

- Q. Could you give us any idea as to what volume—do you sell him any tires? A. Never sold him a tire that I know of.
  - Q. You did sell him batteries? A. Yes.
- Q. Tell us whichever way would be easier, the volume or number of batteries that you sold him in 1946? A. The boy wouldn't buy over four, five or six batteries a month at most. Average. He sells quite a few Firestone. Quite a few.
- Q. Do you know who operates that station at DeKalb Avenue now? 1238? Where Green and Presley used to be? A. Creel, I believe. I called on him afterwards, they took it over, but they were going to handle Goodrich.
- Q. Did they tell you this? A. That they would handle the Goodrich tire. That is what (4260) the company wanted them to handle?
- Q. Creel? A. They weren't interested in handling my tire.
- Q. This is Mr. Creel at that station? A. Yes. That has been several years ago.

## Cross-examination by Mr. Royall:

- Q. This conversation that you had with Green and Presley was about 1948, wasn't it? A. Whenever they left here and went to Florida. I am guessing at the date. I don't have the record.
- Q. You said that you had a conversation when they first went in A. Oh, they were buying from me when they had the old station there, exclusive, on Hood tires and Exide batteries.
- Q. When they first got the lease from Texas is when you had your conversation? A. They were selling Texas gas in this old independent station, leased it from the property owner.

# C. E. Avery, for Commission-Direct

Q. I am asking when the conversation was. A. I said four or five years ago.

Mr. Royall: That is all I want to know.
Your Honor, I move to strike the testimony about
(4261) that conversation.

Hearing Examiner Kolb: Motion denied.

## Cross-examination by Mr. Barton:

and one

Q. Would it refresh your recollection as to when you had that conversation with Green and Presley if I told you that they left for Florida and gave up the station in May, 1952? A. That would be the date.

Q. That would be the date they left to go to Florida?

A. Oh, no, no. It was before that.

(4262) C. E. AVERY was called as a witness for the Commission, and, having been first duly sworn, was examined and testified as follows:

# Direct examination by Mr. Boyd:

Q. Mr. Avery, will you give us your full name and business connection and position? A. C. E. Avery. I am with the Prior Tire Company, sales representative, North Georgia.

Q. What does the "C" stand for? A. Charles. "E".

D Charles Edward.

Q. How long have you been a salesman with Prior?

A. About three years.

Q. You cover the whole north Georgia area from Atlanta up? A. That's right.

#### C. E. Avery, for Commission-Direct .

Q. You sell which products for Prior? A. Sell Hood tires and Exide batteries.

Q. What classes of customers do you call on? A. Truckers and service stations.

Q. How many service stations would you say are in that area? The north Georgia area. A. Just service stations?

Q. Yes, sir. All kinds. A. Must be a couple of thousand.

(4263) Q. Do you have any idea how many Texaco stations? A. I imagine at least two or three hundred.

Q. How many Texaco stations do you sell in your territory, Mr. Avery? A. I am selling three out of about a hundred dealers.

Q. Do you mean of the hundred accounts that you have? A. Out of a hundred service stations I am selling three, and they are on private lease. Individual lease.

Q. Do you sell any leased stations of the Texas Com-

pany that you know of? A. No, sir.

Q. Can you tell us the names of the three that you sell?

A. I am selling Powder Springs Service Station; Texaco Service Station at Madison, Georgia; Hugh Sligh, at Rome, Georgia. That is Hugh W. Sligh.

Q. Is that Powder Springs, Georgia? A. Yes, sir.

Q. What do you sell at that station? A. I sell Hood tires.

Q. How about Exide batteries? A. He buys a few. Not very many but a few.

Q. Does he sell any other tires, Hood tires, besides yours? A. Firestone.

Q. Does he sell any other batteries? A. I imagine—
(4264) Q. At Powder Springs? A. (continuing)—he
does. Yes.

Q. Does he display your tires there out in the rack?

A. He does because that is a private lease. He can display them if he likes.

## C. E. Avery, for Commission-Direct

Mr. Royall: Motion to strike.

Hearing Examiner Kolb: Motion denied.

Mr. Royall: It is not responsive and it is hear-say.

Hearing Examiner Kolb: You have a different definition of hearsay than I have. It is still denied.

#### By Mr. Boyd:

- Q. What was the second one? A. Texaco Service Station at Madison.
- Q. Do you know the name of the man who runs that? A. S. W. Fielding—F-i-e-l-d-i-n-g.
  - Q. What do you sell Mr. Fielding? A. Hood tires.
- Q. Do you sell him any batteries? A. I sell him a few batteries.
- Q. Does he sell any other tires? A. He handles Good-rich tires and batteries?
- Q. Approximately what volume of business do you do with him a year, would you say? A. He just bought that station out about four months ago and it is hard to determine what he will do.
- (4265) Q. I believe the other station you mentioned was Hugh Sligh. A. Hugh W. Sligh.

Q. Where is he located? A. Rome, Georgia.

Q. What do you sell Mr. Sligh? What kind of products? A. Hood tires and Exide batteries.

Q. Does he sell any others? A. He handles Firestone.

Q. About what volume of business do you do with him? (4266) A. I would say around approximately \$2,000 a year.

Q. A year? A. That's right.

Q. What about that first station? I don't believe I got the volume on that. That was Powder Springs. A. Powder Springs will do about the same thing.

#### C. E. Avery, for Commission-Direct

Q. Mr. Avery, have you ever called on any of the other stations, Texaco stations, in your area? A. Yes, sir, I have.

Q. How long has it been since you called on the others? Other Texaco stations? A. This month.

- Q. Can you name some of them for us? A. Well, it is hard to tell. You call on so many.
  - Q. You call on prospects? A. Yes, that's right.

Q. Do you make any sales? A. No, I haven't.

Q. Could you identify a few Texas stations that you have called on in the past months? A. That I have called on with sales prospects? Is that what you mean?

Q. Yes, sir. A. There is a Texaco at Breman, Georgia.

- Q. Do you remember the man who runs that station? (4267) A. Mr. Floyd did have it and it has changed hands. There is a new man in there. He has been there three weeks. I don't know what his name is.
- Q. When were you there? Was Mr. Floyd there or the new man? A. They were just changing hands when I went over.
- Q. Did the station have any tires and batteries on display? A. No Hood tires and batteries. We never sold him any.
  - Q. Any tires and batteries? A. Yes, they had tires.
  - Q. What kind were they? A. They had Firestone.

Q. Any others that you know of? A. No, sir.

3

- Q. Batteries, too? Is that Firestone batteries? A. Yes, sir.
- Q. Do you know whether that is a leased station or independent station? That is, the man owns it. A. It is owned by a distributor up there.

Q. Do you know who that is? A. No, sir, I don't.

Q. Is it a Texaco distributor! A. Texaco distributor.

\* Q. Can you name any others that you called on recently! A. No, sir, I can't.

(4268) Q. Did you ever sell to Floyd at Breman, Georgia? A. Never have.

## C. E. Avery, for Commission-Cross, Redirect

Q. You called on him? A. Yes, sir.

Q. What tires did he handle when you were there? A. Firestone.

Q. Batteries? A. That's right.

#### Cross-examination by Mr. Barton:

Q. What did you sell the Texaco station in Madison?

A. Sell him tires and batteries.

Q. When? Since Mr. Fielding came in? A. That's right.

Q. What did you sell the predecessor? A. Tires and batteries.

Q. You were selling Hood tires and Exide batteries there all along then? A. That's right. The previous operator was Lee Moss.

#### (4269) Redirect examination by Mr. Boyd:

Q. Who was the predecessor to Mr. Fielding at the Madison station? A. Lee W. Moss.

Q. Did he own the station himself? A. No. It was owned by the Ford place.

#### Garland T. Duke, for Commission—Direct

(4270) GARLAND T. DUKE was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

#### Direct examination by Mr. Boyd:

Q. Mr. Duke, will you give us your full name and company you are with, and your position? A. Garland T. Duke, The Duke Company, President.

Q. Where is the company located? A. 508 Stewart

Avenue.

Q. Atlanta? A. Atlanta.

Q. What is the business of G. T. Duke Company? A. Wholesalers of new tires and recapping.

Q. How long have you been in business? A. Since 1950.

- Q. What brands of tires do you sell? (4271) A. Diamond and Denman.
- Q. Who manufactures the Denman tire? A. Denman Rubber Manufacturing.

Q. Where are they located? A. Warren, Ohio.

Q. What about the Diamond tires? A. B. F. Goodrich Company.

Q. Is that some particular division of the B. F. Goodrich division? A. Associated Lines Division.

- Q. What is the selling territory of your firm? A. State of Georgia, principally?
  - Q. How many salesmen do you employ? A. Eleven.

Q. Do you sell batteries? A. Yes, sir.

Q. What brand of batteries? A. Auto-Lite.

Q. How about accessory items like spark plugs and filters and things of that nature? A. No, sir.

Q. What classes of customers does your firm do business with? A. Service stations and small tire dealers.

Q. What percentage of your business would you say is done (4272) with service stations? A. I would say at the wholesale tire end of it about 50 percent.

## Garland T. Duke, for Commission-Direct

- Q. Would that include recapping or new tires? A. Recapping and new tires about 50 percent with service stations.
- Q. This is service stations of all types? A. All types, yes.

Q. Does the firm do any business with Texas stations?

A. Do some, yes.

- Q. What type business is done with Texas stations?

  A. We do some recapping for some of the stations and sell a few new tires to some of them, principally ones in the city they buy maybe a set of tires and put them right on. \* \* We don't have any Texas stations that stock any of our tires, to my knowledge.
- Q. Mr. Duke, can you give us any idea of the amount of business or the number of Texaco service stations that you do business with? A. I couldn't with any degree of accuracy.
- (4273) Q. How many Texas service stations would you say, Mr. Duke, are in the area in which you do business! A. We do business all over Georgia. I wouldn't have any idea.

Q. Do you call on the stations yourself? A. No, sir.

Q. The salesmen handle that? A. Yes, sir.

Q. What about the Auto-Lite batteries? Do you sell those (4274) to any Texas stations? A. I don't believe so. I don't know of any. Frankly, Auto-Lite batteries is a new line with us. We just started handling them January 1.

Q. You had not carried batteries prior to that time?

A. Prior to that we had not.

#### Garland T. Duke, for Commission-Cross

#### Cross-examination by Mr. Royall:

Q. You compete with Dunlop? That is one of your competitors, isn't it? A. Yes, sir.

Q. And you have a number of others? A. Yes, sir.

- Q. Do you recall the E. V. Garrison, Jr., station at 20 South Main Street at Alpharetta? A. No, sir, I don't remember that.
- Q. 20 South Main Street, Alpharetta, Georgia. What salesmen of yours could cover that general territory? A. Albert Burell.
  - Q. Is he here! A. He is not here.
- Q. Do you think you would recognize that station if you saw a photograph of it? (4275) A. I sure wouldn't. I don't go up to Alpharetta myself. We have some customers there that I don't remember the names of. I don't remember that one in particular.

Mr. Royall: That is all I care to ask him.

#### By Mr. Barton:

Q. Mr. Duke, you say you started business in 1950? A. That is right.

Q. And in the year ending 1/31/56 your business was

in excess of a million dollars? A. Yes, sir.

Q. And in the year ending 31 January 1957 it was in excess of \$1,500,000? A. The time hasn't quite reached that.

Q. But that is the estimate? A. Yes, sir.

Mr. Barton: That is all.

#### Garland T. Duke, for Commission-Redirect

#### Redirect examination by Mr. Boyd:

Q. Mr. Duke, has there been any increase in the price of new tires 1956 over 1950? A. Yes, sir.

Q. What would you say is the percentage of increase in price? A. From 1950 to '56?

Q. Yes. (4276) A. They come a little often some years. I don't know; roughly 20 percent.

Q. Your firm sells recapping materials, doesn't it? A. Yes, sir.

Q. What would be the nature of the materials! A. Tread rubber and other repair materials used in recapping and repairing tires.

Q. Have you sold those items ever since you have been

in husifless? A, Yes, sir.

- Q. The sale of those items—camelback and tread rubber—how does that compare to the new tire sales over the six-year period you have been in business! A. It has increased proportionately with the other. I can give you a rough idea of the volume of that end of it. It is roughly about half of a million dollars a year.
- Q. The other part would be new tires and batteries?

  A. New tires—
  - Q. Not batteries. A. New tires and recapping.

(4277) GUY WALTER SCOTT was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

## Direct examination by Mr. Boyd:

- Q. Will you give us your full name? A. Guy Walter Scott.
- Q. And your business connection and position? A. I am employed by G. T. Duke Company, tire salesman.
- Q. How long have you been so employed? A. Ever since he has been in business.
- Q. What is your sales area, the territory you sell in (4278) A. Southeast, northeast, Atlanta, and Decatur.
- Q. What classes of customers do you call on in that area! A. Service stations exclusively.
- Q. How many Texaco stations do you sell? A. Not too many.
- Q. Could you tell us how many? A. In the whole area I don't think it would be over five.
- Q. Could you identify those for us? A. Would I have to do that?
- Q. I want to know who they were, where they were and what you sold them? A. I think I might jeopardize the dealer in the event I did.
  - Mr. Royall: I move to strike the answer, your Honor.

Hearing Examiner Kolb: He has given his reasons for not answering. The motion will be denied.

#### By Mr. Boyd:

Q. Have you made any efforts to call on other Texaco dealers? A. From time to time I have contacted all in my area; yes, sir.

Q. Could you name some of them that you have contacted? A. I could name some that I haven't sold.

Q. That is what I mean. (4279) A. I wouldn't mind doing that because I don't think there would be any—

Mr. Royall: Move to strike the answer. Hearing Examiner Kolb: Motion denied.

#### By Mr. Boyd:

Q. Tell us the names of some that you have contacted?

A. Well, there is Ben Franklin on Ponce de Leon Avenue.

Q. When did you contact him? A. I have averaged a call on him about say every two months since he suggested the other operator.

Q. When was that? A. That hasn't been too long ago. I would say I have called on him three times maybe in two years.

Q. Does that station sell tires and batteries? A. Oh, yes.

Q. Have you seen the kind he sells? A. I think I have; yes, sir.

Q. What brand is it? A. I think they are predominantly Firestone.

Q. Do you know if there is anything other than Firestone in there? A. No, sir, I don't go that far into-

Q. Do you know whether Mr. Franklin owns the station or leases it? A. No, I do not.

(4280) Q. Do you have another station to tell as about? A. Ben D. Watkins.

- Q. Where is he located? A. Buckhead. Roswell Road.
- Q. Is that Atlanta? A. Yes. It is Atlanta address.
- Q. When did you call on him? A. It has been eight or nine months.
  - Q. Does he sell tires and batteries? A. Yes, sir.

organic freque

- Q. Do you recall what he had on hand? A. Goodrich and Firestone.
  - Q. Did you endeavor to sell him tires? A. Yes, sir.
- Q. Sir? A. That was the motive of my call, to try to sell him tires.
- (4281) Q. Tell us what Mr. Watkins told you in that respect? A. That he is not supposed to carry any tires except either Firestone or Goodrich.

Mr. Royall: Motion to strike on the grounds of double hearsay.

Hearing Examiner Kolb: The motion to strike denied.

#### By Mr. Boyd:

Q. What about the Ben Franklin station on Ponce de Leon, Mr. Scott! What reason did he give you, if any, for not buying from you!

Mr. Royall: Objection.

Hearing Examiner Kolb: Objection overruled.

- A. He was satisfied with the line of tires he was carrying and he didn't think it advisable to put in any different line.
- Q. Do you know whether or not Mr. Franklin had any batteries on hand? A. No, sir. At that time, the last time I called on him, (4282) we wasn't carrying batteries so I wasn't interested.
- Q. What about Mr. Watkins? A. The same applies there.
- Q. Can you name some other stations that you called on to try to sell them? A. Berry Service Station, Piedmont Avenue.

Q. About when was this? A. It has been four months, probably, since I called on him.

Q. Did he have tires and batteries on hand? A. Yes, he did.

- Q. What reason, if any, did he give you for not buying?

  A. It wouldn't please the oil company.
- (4283) Q. Do you know whether Mr. Berry leases that station from the Texas Company? A. No, I do not. I believe he did say, though, that he did lease from Texas Company.

Q. You believe he told you that? A. I believe he did, yes.

Q. As best you can tell us, Mr. Scott, exactly what did Mr. Berry say as to why he would not buy from you?

A. He is no different from the others.

Q. Inst tell us what he said to you?

(4284) A. His words, in this particular instance, is that the Texas Company were very hard to get along with unless they carried the tires of Goodrich and Firestone. And they did not—they didn't say that they had to do those things, but they would make them awfully unhappy, such as getting small repairs done and things of that nature around the station.

- Q. Can you name any other stations, Mr. Scott? A. Yes, sir. L. C. Smith. This is not in my territory at present, but at the time I am speaking of was.
  - Q. Where is it located? A. It is on North Side Drive.
  - Q. Here in Atlanta? A. Yes.
- (4285) Q. About when was it? A. The last time I called on Mr. Smith must have been sometime in June or July.
  - Q. 1956? A. '56.
  - Q. Does he carry tires? A. Yes. -
  - Q. What line of tires? A. All I saw was Goodrich.
- Q. What reason if any did he give you for not buying from you?
  - Mr. Royall: Objection.

A. He thought it would be better to string along with Goodrich.

Hearing Examiner Kolb: Overruled.

#### By Mr. Boyd:

- Q. That is what he told you? A. Yes. That was about the substance of the conversation.
- Q. Are there any other instances that you can name?

  A. Yes. Gresham Service Station, on Moreland Avenue,
  Southeast.
- Q. When was this? A. I haven't called on him in about six months.
- Q. Did Gresham have any tires on hand when you were there? A. Yes.
  - (4286) Q. What were they! A. Goodrich.
- Q. What did Mr. Gresham tell you, if anything, as to why he could not buy from you?

George H. Glenn, Recalled, for Commission-Direct

no testimony in this record that any such thing was ever done.

I mean if there is any issue in this case as to the ratio of total TBA sales, not Firestone and Goodrich, to gallons of gasoline on the basis of a statement, generally inaccurate I may say we found, which a dealer makes as to how much TBA de sells, it seems to me it hasn't got much probative value.

This is an awful large stack of documents just to use for that purpose.

Mr. Royall: Your Honor, may I add this one word?

Whatever the other features of it are, this thing is based solely on and dependent solely on the hear-say of what a dealer says, and not based on any records that are kept by him or any supporting data of any kind.

Mr. Dias: May I be heard on that?

I think you will find in the record, somewhere (4344) around Page 1017 to 1035, testimony to the effect that these figures are accurate because they come off the dealer's tapes.

For that reason, some of your figures can't be broken down any further. They include work and other labor costs.

Mr. Royall: Let's look at that testimony.

(4345) Mr. Dias: That is Page 1035, Lines 18 to 21.

Mr. Royall: Your Honor, I don't want to go into this at great length.

This comes from, at one point it says, what the dealer says, and the other time it says it sometimes comes from a tape the dealer has. But that doesn't alter it being hearsay on the part of the dealer and nothing else.

## George H. Glenn, Recalled, for Commission-Direct

And it is not any computation based on any records. There are no records put in to support it.

Hearing Examiner Kolb: It says: "They are sales figures because they come directly from his adding machine tape."

Mr. Royall: That's right. They said earlier that is what the dealer tells them.

Hearing Examiner Kolb: Where is that?

Mr. Royall: That is on 1017.

Mr. Dias: I believe that exchange starts a little earlier than 1017.

Hearing Examiner Kolb: At line 5 it says, "This is the total TBA sales made by the dealer, taken from his books."

Mr. Royall: Yes, sir, but the books have not been offered. This is merely what the dealers report to us, which makes it hearsay, even if it were in writing.

Hearing Examiner Kolb: Apparently you use them to determine whether or not there have been increases or decreases (4346) in the particular stations.

Mr. Royall: What page is that?

Hearing Examiner Kolb: Line 23: "I look at the report and see we have had increases or decreases at that particular station."

Mr. Royall: That is a report that was finally made, your Honor.

Hearing Examiner Kolb: This one?

Mr. Royall: I don't know whether this one.

Is this the original report?

The Witness: These are copies of the reports that were sent in.

Mr. Royall: That is the report.

# Guy Walter Scott, for Commission-Cross

you call on him when you get him as a new customer! A.

Not the first time, no.

Q. In other words, it usually takes a pretty good course of working in and getting acquainted with somebody you don't know in order to get him to take on your line? A. It depends on how he answers me in respect to what he is selling. Often times he closes the door on me by telling me that he cannot sell any other line of tires except what he has in stock.

Mr. Royall: We move to strike the answer. Hearing Examiner Kolb: Motion denied.

## By Mr. Barton:

Q. You say you called on Dan D. Watkins? (4291)
A. Right.

Q. And doesn't he buy from American Tire Company as well as B. F. Goodrich and Firestone? A. I couldn't answer that. He might buy recaps. I don't know. As a matter of fact, he could buy new ones and I still wouldn't know.

Q. When you were testifying about Ben Franklin you said that he was selling what? A. Firestone as well—I believe it was the predominant tire that he had.

Q. And what else? A. I don't think I said.

Q. You started to say something. What were you going to say? A. I don't know that I started to say anything.

Q. Weren't you going to say that he sells recaps also?

A. Well, he does sell recaps.

Q. Does he buy them from you? A. No.

Q. Who does he buy them from? A. That I don't know.

#### Guy Walter Scott, for Commission-Cross

## (4292) Cross-examination by Mr. Royall:

- Q. Mr. Scott, in the case of Mr. Franklin, was he the one that you talked to personally or someone else? A. I talked with one of the two Franklins. I don't know which it was.
- Q. You don't know which one you talked to? A. I don't know which it was.

Q. Was anyone else present? A. No, there was not.

It so happened there wasn't.

Q. And you can't identify the one you talked with?

A. Oh, yes, I can do that I believe. I don't know whether
I can or not.

Q. You can't now identify them? You can't now tell us which one? (4293) A. No, I cannot tell you which one it was.

The Witness: He didn't identify himself as which of the two he was. He just said, "I'm Mr. Franklin." And he spoke with authority so I thought naturally I was talking to the right man.

Q. In the case of Mr. Watkins, whom did you talk with?

A. Mr. Ben Watkins himself.

Q. Was anyone else present? A. On occasion, yes. I called on Mr. Watkins several times. In fact, I sold him a few times.

Q. I mean the time you testified to through Mr. Boyd. Who was present? Mr. Boyd? A. I mean the lawyer Mr. Boyd.

Q. Who was present at the time you testified about a conversation as to that? Anybody else present? A. Yes, at times there were and time there wasn't.

## George H. Glenn, Recalled, for Commission Direct

- Q. At the time you referred to. You referred to a single conversation. A. That I wouldn't dare say whether there was anybody present or not.
- Q. In the case of Mr. Berry, was it Mr. Berry himself you (4294) talked to? A. No. Mrs. Berry happened to be present. I assumed it was Mrs. Berry from the conversation that they had between themselves.
- Q. Was it Mr. Berry you talked to or was it sometimes the— A. If it wasn't Mr. Berry he misrepresented himself.
- Q. Was it Mr. L. C. Smith personally that you talked to? A. Yes.
- Q. Was anybody else there at the time? A. There was a gang of them. He had a lot of help.
- Q. You don't remember? A. No. They were going and coming. He don't let me stay there long enough to let me get acquainted.
- (4314) GEORGE H. GLENN was recalled as a witness, having been previously sworn, was further examined and testified as follows:

## Direct examination by Mr. Dias:

(4336) Q. Mr. Glenn, I hand you Commission Exhibits 204-A through F and ask you to tell us about those. Tell us what they purport to be, and the records they were compiled from, under whose supervision and so on. A. Commission Exhibit 204-A through F represents an especially compiled report at the request of the Federal Trade Commission covering the years 1955 and 1955.

to Items 3-A, 4-A, 4-D and 4-E in the agreement reached in the modification of the May 27 subpoena, and in this particular group the area involved is the Chicago standard metropolitan area. The information shown is the number of dealers, by months, in the categories of "C", "D" and "E" classifications who might have purchased \$1 or more of merchandise in any of the 12 months of each of the years and in any of the categories (4337) from Firestone and Goodrich or both Firestone and Goodrich, and a dollar figure representing that part of the class of accounts total TBA purchases that he purchased, and only that part which he purchased from Firestone and Goodrich.

Q. You mentioned categories a minute ago. You meant tires and tubes, batteries, accessories, is that what you had in mind about categories? A. It depends on where I said it.

.Q. Possibly so. But it does cover tires, batteries and accessories purchases? A. The categories listed here are

tires, batteries and accessories.

Q. I hand you Commission Exhibits for identification 205-A through 205-F, 206-A through F, 207-A through F, and 208-A through F, and ask you if they are not respectively similar reports for the following areas: Omaha, Lincoln, Dallas, and Atlanta? A. They are similar reports especially prepared indicating in the final column that part of the dealer's total TBA volume that was purchased from Firestone and Goodrich.

Q. Did you make these summaries yourself, Mr. Glenn? A. No, sir. I had to have other people do them. It was a very extensive job and a rather costly one, incidentally, that had to be done in each of the divisions.

Q. It was done under your direction, was it! (4338)

A. Yes, sir.

Q. And the data from which these summaries were made all came from official Texaco records? A. Yes, sir.

Mr. Dias: Your Honor, I would like to offer Commission Exhibits 204 through 208-F in evidence at this time.

Mr. Lorenzen: We object to that portion of the emibit which deals solely with Firestone.

Mr. Barton: So do I.

Hearing Examiner Kolb: The objections will be overruled. Commission Exhibits 204-A through F, 205-A through F, 206-A through F, 207-A through F, and 208-A through F, will be received in evidence, subject to a motion to strike by Goodrich as to that portion of the documents which pertains solely to the purchases by Firestone.

(The documents heretofore marked Commission Exhibits for identification 204-A through F, 205-A through F, 206-A through F, 207-A through F, and 208-A through F, were received in evidence.)

#### By Mr. Dias:

Q. Mr. Glenn, I hand you Commission Exhibits 209-A through Z-10 and ask you to identify those, please. A. This is another one of the documents originally requested under the May 27 subpoena and finally included in the agreement reached. It is an unofficial document which is quite fairly (4339) evident by the fact that it doesn't have a form number. It is a record that we found in the pursuance of the development of material for the Commission to be in existence in only one division in our company, apparently on an experimental basis in the Denver division. It is entitled "Throughput of company-owned and third-party stations."

This group of sheets here is that material for the year 1956, by months.

Q. May I point out to you the name in the left-hand corner. That is the salesman, is it? A. I recognize some of those men by name as salesmen.

Q. They are salesmen? A. Yes.

Mr. Dias: I offer these in evidence at this time, your Honor.

(4340) Mr. Lorenzen: We would like to make an objection to the materiality and relevancy of all of these documents. They don't seem to deal with anything involved in this proceeding.

Your Honor, will notice the columns headed "Gasoline Sales"—that certainly is not involved in.

this case.

"Oil Sales"—that is not involved in this case.

"Lube Jobs"—that is not involved in this case.

And "TBA Sales."

As Mr. Dias has quite properly identified these documents, they have reference to the reports concerning which there was testimony in Omaha. That testimony indicated that these TBA sales are not sales of sponsored or Firestone or Goodrich merchandise at all but are the estimates reached by salesmen and the dealers as to the total amount of TBA which that dealer sells.

So that there isn't any way that I can see that any of these documents can have anything to do with the issues of this case, which are limited to questions of how much TBA the dealer buys from Goodrich or Firestone.

It doesn't seem to me to have any connection with that.

Mr. Dias: If you intend to rule adversely, I would like to be heard before you rule. In my opinion, this is another form of policing, your Honor, or a possible form.

(4341) If a company knows how much TBA is going through a station, regardless of whether it is sponsored or not, I believe it is a simple matter for them to compute the amount of sponsored products that the particular station is buying, and from that arrive at some statement as to whether or not the station is adhering to the sponsored program or buying the big bulk of their products from outside sources.

I think the gasoline sales are important. Certainly respondents have made a point of the ratio of gasoline sales to TBA, and I think these reports serve several purposes. I think they show whether or not a particular operator is operating as Texaco feels in an efficient manner, and that is gauged undoubtedly by the volume of gasoline sales and the volume of TBA that goes through the station.

The fact that there may be some lube jobs or oil sales on that, I don't see that that makes the thing unacceptable.

That is my position on it, that it can be used as a form of volicing.

Mr. Lorenzen: I am addressing myself only to that one point. There has been no evidence whatever in this case, in spite of extensive testimony, that any policing of any kind takes place. And to offer a row of statistics and some sort of hearsay evidence that some kind of policing takes place, I don't think that is the way to establish policing.

(4342) If anything like that is going on, certainly among our 38,000 dealers, somebody could be put on the stand to say there is such a thing as policing. But there hasn't been one bit of evidence to that effect.

So I don't see how this set of figures has any probative value on that particular issue.

Hearing Examiner Kolb: Was there any testimony in this case with reference to the TBA sales in connection with the sales of gasoline?

Mr. Dias: Yes. We find it quite often through here.

Mr. Lorenzen: No, I don't believe there has been any testimony to that effect.

Mr. Dias: I think Mr. Wolf-

Mr. Lorenzen: Calculations can be made to that effect.

Mr. Dias: I think they have all talked about ratios, and quotas—not quotas, but certainly ratios, so many dollars worth of TBA to every thousand gallons of gasoline, and so on. It has been referred to any number of times.

Mr. Lorenzen: There is one reference to that effect, and that is in connection with this letter which was sent out in 1952, having to do with how small an amount of TBA of Firestone and Goodrich Companies generally is sold to these Texaco stations compared to this profit computer which a company, not the Texaco Company, got up as a general measure (4343) in the industry of how much TBA a dealer should expect to sell per thousand gallons of gasoline in order to make a good profit on the operation.

That certainly hasn't anything to do with policing.

Hearing Examiner Kolb: Doesn't this follow through on the same thing, the question of the ratio between TBA products and gasoline?

Mr. Lorenzen: Between total TBA and gasoline the computation could be made. There certainly is

# Guy Walter Scott, for Commission-Direct

Mr. Royall: Objection. Hearing Examiner Kolb: Overruled.

A. I don't think that entered into the conversation why he couldn't buy.

(4287) Q. Do you sell to any Texaco stations? A. Yes, I do.

Q. That buy only on a spot or quick sale basis? A. I do.

Q. Are these the ones that you prefer not to name? A. That is right.

Q. Can you mame any other instances, Mr. Scott, other stations where you have endeavored to sell? A. Yes, sir, I have a list here, that I have picked up from memory.

Q. Go ahead. A. Killingsworth Service Station, on Peachtree Road.

Q. About when were you there? A. In October, I guess, 1956.

Q. Did this station have—were they selling tires? (4288) A. Yes.

Q. What line? A. I didn't get inside. The man met me at the outside.

Q. Did you endeavor to sell him? A. Qh, yes.

-Q. What reason, if any, did he give you for not buying?

Mr. Royall: Objection. Hearing Examiner Kolb: Overruled.

A. He was carrying the line that he had been carrying awhile and he was satisfied with it. And he couldn't of course take on any other line. As I remember he didn't give any reason.

#### Guy Walter Scott, for Commission—Cross

#### By Mr. Boyd:

Q. Did he tell you what the line was that he was carrying? A. No, he didn't. All I saw was on the front, which was recaps.

Q. How about some other instances? A. That is all I

have.

(4289) Q. Have you called on these stations since the times that you told me; in other words, Franklin, I believe you said you called there every two or three months, every two months? A. I haven't called on any of those that I named there, I don't believe, since.

Q. Since the times you gave us? A. Since the time that

I gave you there. I don't think I have.

#### Cross-examination by Mr. Barton:

Q. You say you called on L. C. Smith sometime last summer? A. About July or August as well as I remember is the last time I called.

Q. He was selling B. F. Goodrich? A. That is right.

(4290) Q. And you say he gave you an answer like all the rest of these that you have called on, is that right? A. Well, he was just fairly well satisfied with what he was selling and he couldn't take on another line. Or words to that effect.

Q. How many customers do you have? A. I don't keep them down that way. I would say about 75.

Q. How often do you call on them? A. Some I call on every week, some every two weeks, some once a month.

Q. When a man is handling a competitive brand of tires, do you usually get him as a customer the first time

My attack is that that report is based on what the dealer says is on his books, and that therefore that is, without some supporting evidence, not competent.

Mr. Dias: Obviously, Texaco in that section relied on it, otherwise they wouldn't have bothered with them.

- Hearing Examiner Kolb: I will overrule the objection and receive the documents in evidence as Commission's Exhibits 209-A through 209-Z-10.
  - (Whereupon, the documents referred to, heretofore marked Commission's Exhibits 209-A through 209-Z-10 for identification, were received in evidence.)

#### (4349) By Mr. Dias:

- Q. As to each of these, were these records compiled from official Texaco records? A. Compiled in the sense that we don't maintain any record like any of those you have there, but we had to go to sources where the individual pieces of information were available and assemble them.
  - Q. But they are official Texaco records? A. Yes, sir.
- Q. They were compiled by you or under your direction?

  A. Under my direction. Two of them; you didn't show me the others.
- Q. Does your statement apply to 210 A through E and also 211 and 212? A. That they were prepared under my direction?
- Q. Yes, and from official Texaco records? A. Not as such. Assembled from various records. We don't maintain any records just like this.
  - Q. In that form? A. No, sir.

(4357) Q. Mr. Glenn, will you tell us what 213-A and -B purport to be, and how they were compiled, whether by you or under your direction and so on! A. Exhibit 213-A and -B is a response to 8-A and -B under the agreement reached under the subpoena of May 27th ASA sheet covering Goodrich, and BSA sheet covering Firestone.

And it is a special report made to respond to 8-A and -B. We don't carry information in this form. But it was assembled under my direction from a mass of reports that we do have. It gives the dollar volume of TBA sales made by Goodrich and Firestone respectively to Texaco outlets for the years 1952, '53, '54, '55 and '56 by divisions and territories expressed in dollars, and further broken down into classifications of C, D, E, and B.

But it does not, of course, reflect the total TBA (4358) by those classes of accounts but merely the quantity purchased, that we have record of as having

been purchased from Goodrich or Firestone.

Q. Were those records compiled from Texaco records? A. As I said in the first place, from records that we have, but are not a copy of any one record.

> Mr. Dias: Your Honor, I offer 213-A and -B in evidence.

> Mr. Lorenzen: The only objection is the Firestone objection to Exhibit 213-B.

# S. C. Bartlett, for Commission—Direct

(4360) S. C. BARTLETT was called as a witness and, having been first duly sworn, was examined and testified as follows:

# Direct examination by Mr. Dias:

Q. Mr. Bartlett, this will be mainly to clarify the record in connection with Texaco's relationship with Firestone. You have testified previously as to certain relationships with Goodrich, and primarily I want to learn whether or not Texaco's relationship with Firestone is comparable under this TBA program as it is with Goodrich. Now, in view of that-

> Mr. Barton: Talk a little louder. Mr. Dias: I will try to do that.

#### By Mr. Dias:

Q. You testified in connection with Goodrich, you knew of no advance notice to Goodrich that a new station was opening, (4361) that is, that Texaco furnished no information to Goodrich about the opening of new stations or the changing of operators in an old existing station. Is there any type notice given to Firestone in that regard? A. Not to my knowledge; no.

Q. In connection with that, are both rubber companies treated alike by Texas as far as notification of new dealers, new stations and so on? A. I would say in that respect,

yes, sir.

- Q. What services does Texaco perform for Firestone under this TBA arrangement? A. You wish just a general statement?
- Q. Yes, sir; first of all, is it the same they do for Goodrich or does it vary in any way, and if so, how? A. I, perhaps, should describe it. Of course, in the first place, in connection with new accounts or any accounts, we have,

#### S. C. Bartlett, for Commission—Direct

our sales people have occasion to discuss the situation with dealers and make certain recommendations at times as to the line of tires that would best suit his needs and his own interest, and then later on, our sales people have a good deal to do with the sales effort of the dealer, that is, instructing him or teaching him or giving him education along the lines of better merchandising practices that will improve his earning picture, because, as I have stated before, our primary objective is that our dealer becomes a successful dealer or remains a (4362) successful dealer. In so working with the dealer, we have occasion, of course, to assist him, we think, in his merchandising practices and proficiencies and we feel that is a contribution not only to our dealer success but to the TBA supplier, whoever he might be, enjoys part or all of that dealer's business.

He and at all times, of course, we, emphasize the independence of the dealer, his right of choice in whatever line he might handle or in whatever way he might pursue his merchandising activities. Again, I repeat that our primary objective is to bring about a satisfactory operation in their place of business from the standpoint of our primary business which is, of course, petroleum.

Q. How do you approach a new dealer? Let's take the instance of a new dealer, how do you approach him, how do you advise him that you have these two programs? Do you tell him you have the two and tell him to express a choice or how does that come out? A. I am not intimately acquainted with that—

Q. If not, I will ask Mr. Wolf later.

You are familiar with the TBA situation in the home office, are you not? A. In what?

Q. In the home office in New York? A. Well, somewhat; yes, sir.

Q. You have these two rubber companies that you work with, (4363) do you have separate personnel in the

#### S. C. Bartlett, for Commission-Direct

home office that work with one rubber company and then another group that work with the opposite rubber company? A. No.

Q. The same group that are involved in TBA work with both rubber companies; is that correct? A. I would

say that is right.

Q. Is that true of all personnel throughout the Texas Company or do you have special lists for one or the other?

A. One of the other tire companies.

Q. One of the other tire companies, yes? A. We have no special lists that relate one as against the other or as

compared to the other.

(4364) Q. If a man is primarily engaged in TBA work or Texas man primarily engaged in TBA work or whatever the percentage of time is that he spends on TBA work that is spent on Goodrich and Firestone, is that correct? A. Or on any other line that seems to fit in the dealer's picture.

Q. We did have a question earlier in the testimony about the inventory guide, but I think that has been clarified. You did receive these—I am sorry, the exhibit is gone. Well, maybe you saw it, the manual or inventory guide marked Firestone, and also a catalogue of Firestone which outlined all their products with certain deletions. Do you recall that subject? A. I recall seeing it from the chair.

Q. Yes, sir, the last time you were here, you weren't permitted to mention the Firestone side of the picture, but there is no question now you receive those from Firestone, do you not, for dissemination among your dealers, those that buy Firestone products? A. You mean these catalogues?

Q. Firestone catalogues, Firestone inventory guides? A. I don't know that we receive them, perhaps it would be that Firestone disseminates those among our dealers.

#### S. C. Bartlett, for Commission—Cross

# (4365) Cross-examination by Mr. Lorenzen:

- Q. Mr. Bartlett, I think Mr. Dias put a little too strongly the testimony about not giving companies any lists of stations that may be operated or stations at which there are going to be new dealers. I think your testimony was and I think the evidence shows that you have no company policy in that connection? A. No established practice.
- Q. But as a matter of local dealing, it may well be that the local people as between themselves do have such things?

  A. They well might.
- Q. But you as a Texas district manager may, or TBA representative may conceivably give a friend of his who is over either Firestone or Goodrich or both, a list ahead of time showing him the new stations contemplated? A. It is possible.
- Q. That may or may not happen? (4366) A. That is possible; yes, sir.
- Q. You didn't mean to imply in your testimony that it never happened, simply that you had no policy that way? A. That is right.
- (4367) Q. This morning, these other exhibits which were put in, No. 182 to 201, dealt with your deferred credit plan and with a change made on the Texaco credit card in the year 1955. Now are you acquainted with that change? A. Yes, sir.
- Q. Would you state the occasion for making the change in the credit card at that time? A. I would be glad to. It is covered in previous testimony, but I will cover it again.
- Q. If it is all in there, we don't want—can you just tell us briefly what the occasion was? A. The occasion for the

# S. C. Bartlett, for Commission-Redirect

change was that as it became (4368) necessary, due to the demand of our dealers and to meet competition, to establish a deferred credit plan, realizing that this would be costly, we decided that it was only right and logical that if we were to grant these extended terms that it should be confined to those two lines on which we received some commission or compensation. That was the sole reason for making the change at that time.

Q. Did you have anything to do with drafting this type of announcement (indicating) to dealers which is included in Exhibit 181 marked this morning? A. (After inspection). Yes, sir, it was done by members of my staff, with

my knowledge.

Q. Did the staff give notification to Texas dealers about the policy by which you have just testified? A. Yes, this was sent out under division managers' signatures in the divisions but it does cover the announcement of the plan to our dealers.

# (4369) Redirect examination by Mr. Dias:

Q. On that last exhibit you looked at, 191, did that draft of the announcement go throughout your organization in the United States? A. I believe so, to each division officer.

Q. They in turn redisseminated it? A. To the dealers.

(Witness excused.)

(4370) BEN HALSELL was called as a witness for the Commission, and having been previously duly sworn, testified as follows:

# Further direct examination by Mr. Dias:

Q. Mr. Halsell, is your position and duties the same as you last testified? A. Yes.

(4371) Mr. Dias: At any rate, I am now going to discuss 46-E through J and ask you, Mr. Halsell, if you can tell us what those documents purport to be?

The Witness: Well, this is a Texaco form, S-47. Texas Company lists the names of the Texaco dealers who have been approved by Firestone for commission payment. And with the name goes the address and in those righthand columns are the dollar values of Firestone tires and tubes, and second, batteries, and home and auto supplies that individual dealer purchases in a given month.

#### By Mr. Dias:

- Q. How do these records find their way in to Texaco records? A. This record is prepared somewhat in blank by Texaco and sent to the Firestone supply plant through its district office, where as Firestone then inserts the sales figures that apply to the individual account for the month in question.
- Q. And are these regular monthly figures submitted regularly every month? A. This is a regular procedure, yes.
  - Q. The procedure is still in effect, is it not? A. Yes.

Q. Is it based upon those sums shown in those last two (4372) columns that the Texas Company's commission is based; is that correct? A. Yes, to the extent that these figures are incorrect in the beginning and later adjusted to correct figures.

Q. Who puts the figures in there? Does the rubber

company insert the dollar amounts? A. Yes.

Q. What causes the adjustments, returns perhaps? A. Returns or records of theirs that reach them in an incorrect state from the store, which made the delivery.

Q. What happens if they pay you—as I understand,

they pay you a commission, do they not? A. Yes.

Q. What happens if the correction isn't made until a subsequent month or two? A. Well, supposedly an adjustment is made.

#### (4374) By Mr. Dias:

Q. Mr. Halsell, we can talk about Firestone now. Do your salesmen operate with Firestone personnel the same way that you previously testified they do with the Goodrich personnel? A. I wouldn't say exactly the same way, but there is a (4375) similarity in their function.

Q. All right, will you tell us how it differs then? A. It differs by areas in that in one area, you will have a Firestone supply point which is nearby, and therefore is in a better geographical position to give the dealer service, whereas in another situation, you might find that Goodrich

occupied that position.

Q. But in so far as the salesman cooperating with the rubber company represented, by that, I mean you remember the procedure of the salesman— A. In a matter of overall policy, overall operation, there is a similarity in that the salesman respects the dealers right of choice of product, it is never a coersive action. There is a desire always

with either Firestone or Goodrich accounts to help the man to be a better merchant.

Q. Does the Texas Company salesman accompany the Firestone Company representative, for example, in calling on station operators! A. I beg your pardon.

Q. Does your Texas Company salesman accompany the Firestone representative in calling upon— A. Oh, occasionally; yes, sir.

Q. And as I recall, the salesmen do the same thing for Goodrich representatives? A. Yes, sir, in certain situations.

(4376) Q. Would it be the same salesman or do you have some salesmen who work with one company and other salesmen who work with another? A. One salesman may work with two supply companies.

Q. Both rubber companies? A. Yes, or more, depending on the particular situation that surrounds that dealer's competitive problem.

Q. For example, on those exhibits that went in this morning on the blank report of Omaha, I noticed some names of salesmen, Wolf, I believe, and Williams, perhaps, one or two others, taking Wolf because that happens to be a name that comes to mind, just as a hypothetical case, just in his territory, there are Texaco stations that handle Firestone products, and Texaco stations that handle Goodrich products, would Mr. Wolf be the man to introduce the Firestone representative to those stations handling Firestone products or would he be the man who introduced Goodrich products to the man handling Goodrich products? A. If Mr. Wolf is a Texaco salesman.

Q. In that particular area? A. In that particular area, he would bring about the introduction. Not in every case, but in some instances.

(4377) Q. You previously testified about dealer meetings and you stated that the Goodrich representatives attended some of those meetings; do you recall that? A. Yes, sir.

Q. Do Firestone representatives also attend those meetings, those dealer meetings? A. Firestone representatives attend some of those meetings.

Q. Do the Firestone and Goodrich representatives at-

tend the same meetings? A. At times, they do.

Q. Now, you testified heretofore that the Texaco Company, I suppose field officers, talked to new dealers about Goodrich and they also talked to them about Firestone? A. Yes.

Q. You mentioned earlier that your TBA people, I think it was the representative TBA promotion—do I give him his right title—travels in the field and sometimes goes to the Goodrich Company home offices, to the factory to better acquaint himself with the Goodrich method of production and so on, and then I suppose explains those things to the dealers.

Do the salesmen or does that TBA representative do the same or perform the same functions in connection with Firestone? (4378) A. The representative TBA promotion does everything he can do to familiarize himself with the entire rubber industry and in that sense he does work with Firestone.

Q. Now, take the case of a new dealer or a new station opening up, as I understand it, your people suggest that the Goodrich line or Firestone line is a good one to buy in TBA. How do you bring about that first meeting between the new dealer, or the new operator and representative of the rubber company? A. Well, I think I testified before that there is more than one way of accomplishing that. There might be a personal introduction; the Texaco sales-

man to introduce Firestone and Goodrich to the Texaco dealer. Or, the Firestone or the Goodrich representative in that area having seen the construction of a building in that area, might on his own initiative determine who the dealer is to be and go forward then without our introduction and solicited business.

- Q. Does it also ever happen or is it a normal thing to introduce both the Goodrich and the Firestone man to a new dealer; does that ever happen? A. Both the Goodrich and Firestone?
- Q. Yes. A. That is possible, too. Usually, there is a preference by the dealer for one or the other, depending, as I said before, on the nearness of supply, on the aggressiveness or the efficiency of local people of one organization against the (4379) other, depending on the competitive situation that might exist in a given location. There might be a nearby Firestone store in competition with this new dealer. In that case, he would perhaps lean the Goodrich way or the opposite condition might exist.

Q. I think you perhaps—I may have asked this in describing document 46-E through -J; yes. Does Texas use those records, too, to verify the amounts that they get from Firestone. In other words—A. Oh, yes, we have to do that because there are many opportunities for errors there.

- Q. And when Texas checks its figures, do they check the figures, check the amounts they receive against those appearing on 46-E to J, or do they have other figures that they use to compute the amount that is due them? A. I can't think of any other figures that you might have in mind.
- Q. Would this be their only source of supply to check the accuracy of the amounts that are paid by Firestone or Goodrich? A. To check these figures?

Q. No. As I understand it, monthly, Texas, as division office received a check from one or both of the rubber com-

panies? A. Yes.

(4380) Q. Now, in determining whether or not the check includes all that is due them, do they compute it from Commission Exhibit 46-A through -J, as the case may be? A. The information that appears on these forms is the basis for that checking process.

Q. But, aren't those amounts supplied by the rubber companies? A. These amounts are supplied by the rubber companies. They are inserted on S-47 by the rubber

companies.

Q. Then, I take it that all Texas does is check for perhaps typographical errors or errors of addition or subtraction or something of that sort? A. Well, any kind of

error that might have occurred.

Q. The point I am trying to determine is, is there any other way that Texas can check the accuracy of the amounts that are reported to them on that particular form? A. The obvious way to do it is to check with the dealer and determine with the dealer what he signed for and what he has bought.

Q. Now, I think you did tell us the last time how you received payment from Goodrich. Would you explain the system of payment by Firestone to Texas? A. Oh, as far as I know, I think the system there is the same. There is a monthly accounting and the check is sent to the division office of the Texas Company by the rubber company.

Q. By the rubber company, and are the Firestone checks (4381) similar to the Goodrich checks except in the local division office charged to their particular account, or does it go to a home office? A. Yes, I think so.

Q. You think it is kept in the division? A. In the divi-

sion.

Mr. Dias: I have nothing further for Mr. Halsell. Ben Halsell, Recalled, for Commission—Cross, Redirect

Cross examination by Mr. Lorenzen:

- Q. Mr. Halsell, this Exhibit 46 is an accounting record, is it not? A. Yes.
- Q. Now, you testified that one obvious way to check it would be to check it with a dealer? A. I did.
- Q. Now, how does that come about? That is, one of the local people gets this 146 thing that something is out of whack, he can check it? A. Dealers at time buy from more than one supply point and this report may specify the products purchased from one supply point to the exclusion of products purchased from the second or possibly the third supply point. And in as much as the dealer can supply information on his entire purchases, that comparison is made.
- Q. So that if the local man thinks something like that may (4382) be amiss in one of these cases, that is the method he has of checking it? A. That is right; we check him for accuracy of commission statement.

# (4383) Redirect examination by Mr. Dias:

Q. Which of the Texaco outlets enjoy credit card privileges? A. You mean which Texaco outlets are nominated as those which the credit card holder might patronize?

Q. Not patronize, but who among the outlets or which type outlet uses credit cards? In other words, would the bulk plants have credit cards? A. No.

Q. Would the consignees have credit cards, have credit card privileges, I mean? A. Well, if a consignee of a Texas company happens to hold a credit card, he then is entitled to make credit purchases (4384) on that card.

Q. Now, I haven't made myself clear. At a Texaco station where you present your credit card? A. Yes, sir.

Q. They honor it there? A. Yes, sir.

Q. I consider that a privilege that they can accept credit cards. A. Yes.

- Q. Is it only retail service stations that have those credit card privileges or do bulk plants, consignees, and that type outlet also have them? A. Our credit cards are good at all land service stations and at all, I believe, marine service stations, but the card is not good for a credit, for a purchase at a wholesale distribution point, such as a bulk consignee would be, or a distributor.
- Q. So that in effect, they are only good at retail outlets, whether they are marine or otherwise? A. Yes.

(4385) M. A. WOLFE was called as a witness for the Commission and, previously having been duly sworn, was further examined and testified as follows:

# Direct examination by Mr. Dias:

Q. Mr. Wolfe, are you still special representative of TBA sales? A. Yes, sir.

Q. And have your duties changed in any way since we talked to you last? A. No.

Q. I want to hand you Commission Exhibit for identification 43, and tell us if you will please, what that is? A. (After inspection) This exhibit is Firestone's form S757. The title of it is "Changes in oil company listings." Do you want me to go on and describe the whole thing?

Q. What is the purpose of it? What does it do? Who furnishes the form? (4386) A. First it denotes the Firestone district involved, the oil company involved and the oil company division involved, the type of account, the name of the dealer, his trade name and his address, and in those cases where it is a replacement of a dealer, it

shows the dealer's name that was replaced in the station. It shows the effective date of the dealer's occupancy of the station. It shows the oil company representative's number, code number, and provides a space for Firestone's store, city or territory number, the regular supply point assigned by Firestone to this particular account and when necessary emergency supply point is also shown. It shows the date that Firestone assigned a franchise or contract with the dealer and their estimate of the potential annual volume of Firestone products that this dealer will handle in total dollars, the percentage of that volume in tires and the percentage in batteries, and the percentage in home and auto supplies.

It also provides space for them to show the brands handled other than Firestone, broken down between tires, batteries, and home and auto supplies. It shows the principal business of this particular dealership and provides space for other comments and at the bottom provides space for their district manager to approve or not approve.

Q. Now is that fom provided by Firestone or is that a Texas form? (4387) A. This is a Firestone form.

Q. And who fills it out, Firestone or Texaco? A. Well, as indicated in the top of the form, it can be issued by the oil company or by the Firestone district and it also shows that the reason for issuing is the addition, as it is spelled out here, the addition, succession, deletion, or other reason for issuing the form.

Q. Do I understand then that Firestone supplies Texaco with quantities of those and then when the occasion demands, Texaco fills it out and sends them to Firestone, is that correct? A. Yes, sir, Firestone furnishes our division office with a supply of these forms and when necessary, we initiate the form and send it to Firestone.

Q. And then on occasion Firestone itself computes the form and sends them in to Texas, is that correct? A. Yes.

- Q. And is this form still in use? A. Well, that form number is still in use, that particular form might have been revised some—
- Q. Substantially? A. Not substantially, I wouldn't think.
- Q. In effect you have the same type of information, whether it be in that exact form or some other form, is that correct? A. Yes, sir.

# (4388) By Mr. Dias:

Q. Now as special representative, TBA, do you work with both rubber companies? A. Yes, sir.

Q. Do you spend 100 percent of your time on TBA solely? A. Yes, sir, practically. I am never involved in any other part of our company business except that relates

to the tire company problem.

- Q. I see, and just what is it that you do in connection with Firestone? A. Well, I study their promotional programs and I try to disseminate the information and the principal features of their promotional programs and selling campaigns to our organization in our divisions with the hope that they will in turn take it right to our dealers and other accounts.
- Q. Are you in charge of, are you directly superior to these (4389) field TBA representatives? A. I am not in charge of those men. They are under the supervision of our division management. Insofar as being superior to them, I cover the entire country and work with all of our divisions, I work with the men, the representatives, TBA promotion in the division and with our other division management personnel.
- Q. Are you responsible for formulating the policies that these TBA representatives follow? A. I have nothing to do with formulating a policy, no.

Q. Do you have—you are stationed in the home office, are you not? A. Yes, sir.

Q. Do you have a staff of assistants, clerical help or anything of that sort working on TBA? A. Not a staff, I think as I testified before, I only have one person, clerical

help at the office there.

Q. And does that help that you mentioned, does he or she work on both Goodrich and Firestone, whatever comes up in the TBA field, whether it be Firestone or Goodrich? A. She handles whatever I ask her to handle for either company.

Q. I see. Do you spend more time with one rubber company than the other? A. Well, you would have to ask me at what particular time, (4390) I would think, because it depends on where I am working and what I am

trying to get done.

- Q. Well, what would be some of your problems that would cause a difference in your duties? A. Well, in working with the home office, for instance, of the rubber company, I might have more problems that have been sent in to my office from the field, say, to handle with one than I would the other. Or that there might be more promotional programs in the making or that we thought could be made on certain phases on the operation in the field whereby I might not spend the same time with each company because their programs might be different.
- Q. What are some of the problems that might come to you from the field? A. We have information that is sent in to us that certain markets might not have the strongest type of supply point, maybe, or that the existing supply point wasn't functioning like our dealers thought they should for them. We take those problems to the management.
- Q. Of the respective rubber companies? A. Of the respective rubber companies and try to work it out as best

we can. We have on promotional programs, we have reaction from the field that I discuss with the rubber companies.

- (4391) Q. What type of promotion programs would they be? A. The same as campaigns and just merchandising programs that they devise for service station type deals.
- Q. Does Texas engage in cooperative advertising or any type of advertising with Firestone in conjunction with Firestone? A. Do you mean does the Texas Company help pay for that advertising?

Q. Yes. At service station level or nationally? A. No, sir, not to my knowledge.

Q. As I understand the program, the Texas or Texas stations attempt to tie in particular local sales with national advertising of one rubber company or another, do they not? A. Yes. We encourage the dealer to tie in his local advertising with the advertising programs of the rubber companies. They have their own scheme of advertising at local levels.

Q. By "they" you mean the rubber companies? A. Rubber companies.

Q. Do you know anything about these jumbo cards; for example, throw-aways, as they call them, handed out normally by the service station operator in his particular neighborhood? A. B. F. Goodrich Company devised a mailing piece that they call a jumbo card. I suppose that is what you have reference to?

(4392) Q. Yes. A. Yes, I am familiar with that.

Q. Does Texas Company itself do anything along the same line to promote the products of one or the other of the rubber companies? A. We have a follow-up system that we furnish a dealer that wants to use it and included in that is mail cards, post cards, there are several of those cards on different subjects, and included in that a group of

# M. A. Wolfe, Recalled, for Commission-Cross, Redirect

cards are meaning B. F. Goodrich TBA and one that means Firestone TBA.

Q. Now, on something of that sort, do the rubber companies contribute to the cost of the dissemination of that type card? A. No, sir.

## (4394) Cross-examination by Mr. Barton:

Q. Mr. Wolfe, these jumbo cards put out by B. F. Goodrich, these are advertising tires and accessories, are they not? A. Yes.

Q. Is it a sales problem so far as Goodrich is concerned, getting these mailing pieces utilized by the service stations, so that their products will be advertised to the public. Isn't that it? A. That is right.

Q. And the function which your department and the Texas salesmen perform is to sell the service stations on the idea of engaging in direct mailing of these particular pieces; isn't it? A. Right.

(4395) Q. And by and large the Texas salesmen do a competent job in promoting the use of those mailing pieces of B. F. Goodrich Company, do they not? A. We think we do a pretty good job.

#### Redirect examination by Mr. Dias:

Q. What do these cards look like? Do they have the B. F. Goodrich name all over them, or in prominent place on them? A. Yes.

Q. So when they advertise tires, batteries and accessories, it is Goodrich tires, batteries, and accessories? A. Yes.

GEORGE H. GLENN resumed the stand and, having been previously duly sworn, testified further as follows:

## Cross-examination by Mr. Lorenzen:

Q. Mr. Glenn, you testified as to some of the exhibits (4396) which were put in this morning that they were special compilations made up for the Commission or at the request of counsel that they were not copies of any records kept in that form by the Texas Company.

I want to call your attention to some of the other exhibits which were put in on your direct examination and ask you whether or not that is also the case as to these exhibits.

Will you look at Exhibit 115 and tell us whether that is a Texas record as such or a compilation? A. (After inspection) This is Commission's Exhibit 115-A and it is not a Texas Company record as such but is a compilation of figures from several sources.

Q. How about 117? A. (After inspection) That again is not a regular Texas Company record but after much difficulty was compiled from such records.

Q. Is 119 a Texas Company record? A. No, sir, it is not a regular Texas Company record and again was compiled especially at the request of the Commission in response to one of their demands.

Mr. Dias: Requests.
The Witness: Requests.

#### By Mr. Lorencen:

Q. Will you look at 121 and tell me whether that is a (4397) Texas Company record? A. (After inspection) It is not a Texas Company record as such but again compiled at the request of the Commission in this form.

Q. 123 is the next one? A. No, sir, again not a regular Texas Company record, but compiled specifically upon request for this occasion.

Q. I am going to ask you about—I will ask you to gather Exhibits 204, 205, 206, 207, 208, and to various letters assigned to portions of those exhibits, and ask you whether those are copies of the Texas Company records or compilations? A. These are not copies of Texas Company records but rather a compilation of information taken from several sources and especially consolidated for the type of report that the Commission requested.

## (4398) By Mr. Dias:

Q. Did that deal through 204 through, or just 204? A. Four, five, six, seven, eight, and A through F on each one of them.

Mr. Dias: That was your testimony; all right.

#### By Mr. Lorenzen:

Q. I show you Exhibits 210, 211 and 212, and ask you whether those are copies of Texas Company records or compilations made by you for the Commission in this case? A. (After inspection) On 210-A to E, is a special record prepared at the request of the Commission and is not a regular Texas Company record. That applies equally to 211 and 212.

Q. All of the exhibits on which I have asked you this afternoon, however, are compiled from the Texas Company

records? A. Yes, sir.

Q. Now, this Exhibit 209-A to Z-10, in respect to the column headed TBA Sales is, as I understand it, not made up from a Texas Company record? A. (After inspection) As I attempted to indicate this morning, this record is not one that we particularly compiled at the request of the

Commission but rather had copies made of in the only one of the 15 divisions of the company where they maintain or carry such a record and the information is not based on data that is available in the Texas Company records.

Q. Now in arguing the admissibility of the exhibits showing (4399) the gasoline sales this morning, that is 210-A to E, and 211, counsel stated that he wanted it, among other things, for the purpose of making a comparison between the gasoline sales gallonage figures and the dollar TBA figures which are shown on these other exhibits to which I have called your attention and also some of the older exhibits which have been put in heretofore.

Now, will you state whether a comparison of that type can be made? A. Well, No. 1, it is not a practice in our company to make such a comparison. We never do. From the standpoint of the figures that are shown on these exhibits here, we have quite carefully tried to point out that especially in the case of type B accounts, that the volume represented for them is volume which passes through that type of account and as such may or may not depending upon the circumstances be reflected also in C and D, so that a percentage proportion of that category might represent a duplication.

Q. Otherwise, are figures of gasoline gallons and dollars of TBA sales comparable? A. No, that is the particular reason we don't use that system because on the one hand, you are talking about units of gallons which fortunately for us haven't changed over the period of years, whereas in the TBA, we are talking about dollars which have, as we all know, changed by reason of inflation and (4400) increases or decreases, changes in prices, so forth and so on, so to use a rather hackneyed expression, you are dealing in apples, and oranges when you try to compare gallons and dollars.

Q. Are there any other factors affecting these TBA sales dollar figures on the exhibits other than information which appears on the exhibits themselves? A. Now let's see which exhibit are we referring to in that case?

Q. Well, look at as an example, look at the over-all volume exhibit, I think it is 117 and 119. A. (After inspection)

And would you repeat your question, please?

## (Question read.)

The Witness: Well, one of the factors that you may have in mind is the question of whether this includes all of the TBA which our dealers may purchase which of course is not the case. This applies only to the TBA that we have record of that they purchased from Firestone or Goodrich. I will look again.

Q. Can you compare the increase in dollars in TBA sales on those two exhibits with the increase in gallonage shown on the gasoline exhibit which is 211? A. Well again, we are in the same area as I previously mentioned of discussing the question of gallons and units in (4401) the TBA and dollars, and on that basis, they are not truly comparable and the situation as it applies to gasoline sales through consignees rather than purchases made by consignees because they don't buy any is equally applicable.

Q. Is it possible to make a comparative study which allows for all of the various differences between dollar figures and gallonage figures? A. Well, from a standpoint of establishing the related value of C volume and D volume of gasoline business and in turn the relationship of C volume and D volume of TBA business.

Q. But such a study has not yet been made or offered in evidence? A. No, but out of all of the figures that have now

been furnished to the Commission, if I may indulge for a moment in the kind of work that is my chief responsibility, if you have figures of this kind together, you naturally try to blend them or try to analyze them to determine what they mean and this sort of information based on both gallonage and TBA dollar value, as well as number of accounts brings out of course the fact that our number of C accounts during the period in question here from '52 to '56 have increased by some 19 percent and a fraction, I don't remember the exact number, whereas at the same time the dealer accounts have decreased in number by 8.85 percent. At the same time, the proportion naturally of Cs in number to Ds in number we find that the Cs have increased as (4402) to the total by some 6 percent. Then as to the volume of gasoline during that period the volume passing through the C accounts has increased 31 and approximately 31 percent, whereas that for the Ds, the volume for the D accounts has decreased 2.34 percent.

And as would naturally be expected, the volume of TBA has followed that same trend with your TBA volume for the C accounts representing the approximate same percentage to the total as does the gasoline and the change in the percentage between the C and Ds following the same

trend as it does on the gasoline.

And relatively taking a C and a D account as a pair and adding the two together, their relative relationship between '52 and '56 has again shown the same evidence of an increase in the value of the C, a decrease in the value of the D, and likewise, using that same comparison, you will find the same result as it applies to gasoline. So that using all of the information that is here, or somewhere in the data that has been provided, and following a practice that is part of my job and listing, you come up with that sort of a finding that the TBA and the gasoline have followed closely together as far as a relationship is concerned but not nec-

essarily of course in the fact not as applicable to all TBA, but rather only that part that might be purchased from the so-called sponsored companies.

(4403) Q. That is a result to which you come, not in trying to compare dollars as such with gallons as such, but in comparing all of the figures— A. All of the figures that are made available.

Q. (Continuing) —that are in there and trying to reduce them to a common denominator? A. A common denominator.

(4412)

Hearing Examiner Kolb: On the record.

Mr. Dias: I would like to have marked for identification as Commission Exhibits 214-A through E the list of specifications attached to the Continental subpoena dated May 16, 1957.

(The document referred to was marked Commission Exhibit 214-A through E for identification.)

Mr. Dias: As Commission Exhibit 215, the Conoco response to Item 1-A of Specification I, showing the number of Conoco lessees during the years 1952 through June 30, 1956.

I offer 215.

Mr. Lorenzen: This is the first piece of documentary evidence relating to the Continental Oil Company which is offered in evidence in this case, and so I think I ought to state our objection to this whole line of exhibits at this time, and perhaps I may have an understanding that the objection will go to all the exhibits offered at this time relating to the Continental Oil Company.

# Colloguy

Generally these exhibits consist of statistical information from the Continental Oil Company, leases, forms, and intra-company communications of the Continental Oil Company, to none of which is the Texas Company a party; none of which have any relation to the Texas. Company; no employees or officers of the Texas Company have had anything to do with any of these (4413) exhibits; the name of the Texas Company doesn't appear in any of them: we think that none of this evidence is competent as against the Texas Company. It is not material or relevant to any issue relating to the adjudication of whether or not the Texas Company is engaged in any type of unfair competition in connection with carrying out its obligations and duties under its contract with the Goodrich Company which alone is here involved.

So we think that it has no probative value at all, that an admission of these documents and a basing of any adjudication thereon would violate both the Rules of the Commission as to probative evidence and also the Administrative Procedure Act. We think that it would be depriving the Texas Company of the usual protection of due processes of law to permit this evidence in as against the Texas Company. A large part of it, I may point out, is completely hearsay, double hearsay or quadruple hearsay in many cases.

In my objection to competence, I want it understood that I have agreed with counsel supporting the complaint that he need not produce a witness to come and say that this particular item is a compilation made from the books.

My objections to competency I think would be just as effective even if such a witness were pro-

#### Colloguy

duced, and it goes to the substance and not the form in which this evidence is produced.

- (4415) Hearing Examiner Kolb: No. Let the record show that standing objection to all the documents of Conoco, on the basis that the Conoco information has no bearing upon the issues in this proceeding.
- (4427) Mr. Lorenzen: I would like to state an objection to all of these documents on the ground that they are purely intra-company papers and documents to which the Texas Company is not a party and which are in no way binding on the Texas Company or competent against it.
- (4451) Mr. Dias: Your Honor, at this time I would like to re-offer some Goodrich documents that were previously rejected. The rejections appear at Pages 412 and 413 of the record.

At this time I would like to offer Commission's Exhibit 71.

Mr. Barton: I have the general objection, your Honor. This is a paper with respect to the contract with Jenney Manufacturing Company.

Mr. Lorenzen: May it be understood that the same objection made to the Continental Oil Company document this morning, the same general objection will also relate to the (4452) Jenney Manufacturing Company for the reasons stated in the course of that objection.

Hearing Examiner Kolb: That is your general objection?

#### Colloquy

Mr. Lorenzen: Yes. If I say "general objection" to the documents about to be offered, it will be understood to mean the same general objection which we had to the Continental documents.

Hearing Examiner Kolb: The objection will be

overruled.

The document will be received in evidence as Commission's Exhibit 71, subject to a motion to strike by The Texas Company.

(Whereupon, the document referred to, heretofore marked Commission's Exhibit 71 for identification, was received in evidence.)

Hearing Examiner Kolb: Who is Jenney?

Mr. Barton: Another oil company. It does business with Goodrich.

Mr. Dias: I offer Commission's Exhibit 72.

Mr. Barton: Same objection.

Mr. Lorenzen: Same objection, and the intracompany objection.

Hearing Examiner Kolb: The objections will be overruled.

(4453) The document will be received in evidence as Commission's Exhibit 72, subject to a motion to strike by The Texas Company.

(Whereupon, the document referred to, heretofore marked Commission's Exhibit 72 for identification, was received in evidence.)

Mr. Dias: I offer Commission's Exhibit 73.

Mr. Lorenzen: This exhibit relates to the Shell-American Petroleum Company.

May I have it understood that we have the same general objections as were made in the case of the Continental Oil Company documents.

#### Colloquy

Hearing Examiner Kolb: The objection will be overruled.

The document will be received in evidence as Commission's Exhibit 73, subject to a motion to strike by the Texas Company.

(Whereupon, the document referred to, heretofore marked Commission's Exhibit 73 for identification, was received in evidence.)

(4454) Mr. Dias: I offer Commission's Exhibit 77-A and B.

Mr. Barton: I have just the general objection, your Honor,

Mr. Lorenzen: The general objection made to the other Continental Oil Company documents.

Hearing Examiner Kolb: The objections will be overruled.

The document will be received in evidence as (4455) Commission's Exhibit 77-A and B, subject to a motion to strike by The Texas Company.

Mr. Dias: I offer 78-A and B.

Mr. Lorenzen: The general objection, and the intra-company objection.

Mr. Barton: I have the general objection.

Hearing Examiner Kolb: The objections will be overruled.

The document will be received in evidence as Commission's Exhibit 78-A and B, subject to a motion to strike by The Texas Company.

#### Colloquy

(4458) Mr. Dias: I offer Commission's Exhibit 82-A and B.

Mr. Barton: I have the general objection. It is a copy of the agreement of the Ohio Oil Company.

Mr. Lorenzen: Same objection to this document relating to the Ohio Oil Company as was made in connection with the Continental Oil Company documents.

Hearing Examiner Kolb: The objections will be overruled.

The document will be received in evidence as Commission's Exhibit 82-A and B, subject to a motion to strike by The Texas Company.

Mr. Dias: I offer Commission's Exhibit 83-A and B.

Mr. Lorenzen: The same objection. The hearsay objection—I think this one should be excluded also under the ruling made this morning with respect to 241.

Id n't know just what it is. It seems to be somebody's account of minutes of some kind of a meeting which they had at the Ohio Oil Company.

I will withdraw the special point. This comes-(4459) under other than the Exhibit 241 ruling. I will state the general objection and the intra-company and general hearsay objections which I have heretofore made.

Hearing Examiner Kolb: The objections will be overruled.

The document will be received in evidence as Commission's Exhibit 83-A and B, subject to a motion to strike by the Texas Company.

#### Colloguy

(4464) Mr. Dias: I offer Commission Exhibit 91-A through -C.

Mr. Barton: I have no objection other than a

general objection,

Mr. Lorenzen: I suppose the general objection doesn't apply to that portion of 91-C, which deals with the Texas company. But in addition it purports to deal with Continental Oil, Shell-American, Jenney Oil Company, and Ohio Oil Company, and I would like a general objection to go to any figures or etatistics or information other than relating to Texas Company.

Hearing Examiner Kolb: Are these all mixed

together?

Mr. Barton: Yes, your Honor.

Mr. Dias: The tabulation is on one page.

Hearing Examiner Kolb: The objection will be (4465) overruled. The document will be received in evidence as Commission Exhibit 91-A to -C, inclusive, subject to motion to strike on the part of Texas as to that portion which deals with other oil companies.

Mr. Dias: I offer Commission Exhibit 92. I might say that this was partially admitted the last time, and I assume it had to do with the Texas Company.

Mr. Barton: That is right.

Mr. Dias: I would like to offer the exhibit in its entirety on all the oil companies.

Mr. Barton: I have a general objection.

Mr. Lorenzen: General objection to the additional portions of the Exhibit 92.

Hearing Examiner Kolb: The objection will be overruled. The document will be received in evi-

#### Colloquy.

dence as Commission Exhibit 92, subject to a motion to strike on the part of Texas as to that portion pertaining to other oil companies.

(4466) Mr. Dias: I don't believe there is anything excluded.

Mr. Lorenzen: If we are not estopped on dates—it will be quicker to make the objection than to hunt for it—if we are not estopped on dates, if this offers figures back of 1952, we make, I think, what is known as the ancient history objection to any figures going back beyond 1952.

There is some misunderstanding as to how much was being offered on 92 a month ago. Information as to the Texas Company had been admitted, but it was not clear whether that included the tabulations going back as far as 1946. Now, Mr. Dias is re-offering the exhibit as stated, that he wants to offer the entire exhibit, including anything which may have been excluded before.

In order to save our objection to any charges made against the Texas Company before 1952, I just want to state that again also.

(4467) Mr. Dias: I offer Commission Exhibit

\*Mr. Lorenzen: General objection to other companies listed on this exhibit except the Texas Company.

Mr. Barton: General objection.

Hearing Examiner Kolb: Can those be separated?

Mr. Barton: No, your Honor, they cannot be. It is one page. As a matter of fact, the information

### Joseph A. Hoban, Recalled, for Commission-Direct.

with regard to the Texas Company has already been put into evidence in another exhibit. The same information with respect to the Texas Company has been placed in evidence in another exhibit heretofore.

Mr. Lorenzen: The figures are separately, stated.

They could be cut off.

Hearing Examiner Kolb: The objections are overruled. The document will be received in evidence as Commission Exhibit 132, subject to a motion to strike by Texas as to the portion (4468) of the document which applies to other oil companies.

Mr. Dias: I offer Commission Exhibit 136.

Mr. Lorenzen: General objection to all information on this exhibit except that relating to the Texas Company.

Mr. Barton: I have a general objection also.

Hearing Examiner Kolb: The objections will be

overruled, subject to a motion to strike by Texas as to matters pertaining to other oil companies.

(4474) JOSEPH A. HOBAN was recalled as a witness for the Commission and, previously having been duly sworn, was further examined and testified as follows:

# Direct examination by Mr. Dias:

Q. Mr. Hoban, will you name the oil companies with which Goodrich has an override or sales commission arrangement? A. The Texas Company, the Continental Oil Company, the Ohio Oil Company, the Shell-American Petroleum Company, the Jenney Oil Company, the Emblem Oil Company.

# Joseph A. Hoban, Recalled, for Commission Direct.

.Q. Are there any others? A. No, sir, that is all.

Q. Are you familiar with the contracts that you have with those companies? A. Yes, sir; I think so.

Q. We know that there is a formal contract in the

record as to the arrangement between Texas-

Mr. Royall: Your Honor, would it save time if we object to all testimony relating to any other oil companies, er do you want us to make objections each time?

(4475) Mr. Dias: I have no objection.

Hearing Examiner Kolb: Let the record showthat Texas Company has a standing objection to all questions with reference to other oil companies.

#### By Mr. Dias:

Q. We know that you have a formal contract—they are in the record, as a matter of fact-with Texas, Continental, and Ohio. And by "formal contract" I mean the usual two-page letter, it is usually in that form. Do you have similar written arrangements with each of the other three -Shell-American, Jenney, and Emblem? A. Not in the form that you speak of. They are smaller local type operations and we did not go to the trouble of formalizing an exchange of contract between our companies. We do have written operating instructions setting forth our relationship and the rates of sales commission, and other details that have gone to our organization and have gone to them, which would show the complete understanding. There is no formal contract other than the implementation by written instruction between those smaller companies.

Q. That was my understanding.

How do these arrangements with the other companies operate? First of all, tell me this: Do the terms vary in any way from those-talking about Shell-American, Jen-

## Joseph A. Hoban, Recalled, for Commission-Direct.

ney, and Emblem—do the terms of those contracts vary in any way (4476) from the Texas contract?

Are you familiar with it? A. Yes, I am familiar with it. I want to be sure that I understand what you are asking. Are you asking about the rates of the commission only?

- Q. Yes. A. To my knowledge there is no difference in rates of commission between any of our sales commission customers.
- Q. If you will, please, let me show you Commission Exhibit 3-A and 3-B, which is the Texas contract. Since the first page deals with the rates which you tell me are substantially the same as all others, will you direct your attention to the last paragraphs on page 3-B. A. Yes, sir. What is your question?
- Q. My question is, do your contracts, shall we say these informal contracts with the other three—Jenney, Emblem, and Shell-American, are the terms and conditions with those companies the same as they are with the Texas Company! A. They would be if the conditions were exactly the same, but in the case of the Jenney Oil Company practically all of their operations are either owned, leased, or well-established retail dealers. They operate only in metropolitan Boston. As a consequence of that they are not involved in the question of 7½ percent on consignees and things of that kind. Our understandings on all those things would be the same if the (4477) conditions were the same, Mr. Dias.
- Q. That is the thing that bothers me. If the conditions were the same, I don't think I understand that. A. The reason, for instance, consignees with the Texas Company, there isn't such a classification with Jenney as a consignee. Their business is dealers. That is the reason it is not exactly the same.

# Joseph A. Hoban, Recalled, for Commission Direct

Q. How about Emblem Oil Company? A. Emblem is a little local arrangement. We sold them many years on an outright purchase basis, and we, for competitive reasons, moved to this sales commission plan. They have a small number of stations and they are all retail stations. We have no wholesalers or anything involved, or consignees involved in that relationship. It is just a little local oil company.

Q. Can you tell us where the rates of commission—what the range of rates of commission is? A. That would

be all ten percent.

Q. How about Shell-American! A. Shell-American would be all ten percent; dealer operations with them.

Q. And Ohio Oil? A. Ohio Oil I think we would have

all three rates of commission involved with them.

Q. How about the duties of those respective oil companies? (4478) Are they similar to those of Texas, that is, the services they perform to earn these commissions? A. Their obligations are identical. The manner in which

they perform varies by company.

Q. How are their outlets served? Are there designated supply points in each instance with each of the oil companies? A. Very similar to the arrangements that I outlined to you with the Texas Company. They are supplied by what would be the most convenient or nearest supply point that we have. That could be a B. F. Goodrich store, it could be an independent dealer set up as a supply point, or it could conceivably be our district in some cases. We serve from any of those three general classifications.

Q. Do Goodrich salesmen call on the outlets of those respective oil companies? A. Indeed they do, sir, every one of them that we sell are called on, and every one has a contract with B. F. Goodrich. A tire memorandum of agreement, which is our tire contract, is signed with each

individual dealer.

Q. I don't believe we asked you this the last time. How are your salesmen compensated? Do they work on a commission basis? A. No, sir. Our salesmen are compensated on a monthly salary plus bonus arrangement paid annually.

Q. How is that bonus determined? A. We have a definite set of yardsticks which begin with (4479) attainment against assigned quota. Following the attainment against assigned quota we have the expense of the salesman, his traveling and any other expense involved in his operation. We have a profit evaluation where he sells premium quality goods to a larger degree than he does second and third line goods. It adds to his bonus.

We have a cooperation classification. Does the salesman get his reports in on time and is his relationship with the district such that he rates a high mark in clearing his business promptly and in cooperating with requests for calls and so forth.

If you want the entire details of that I would have to say that I will get it for you. Those are the high points of the manner in which we arrive at the bonus for the salesmen.

Q. Does the salesman receive commissions on TBA sales to any of those six oil companies? A. We pay no commissions to our salesmen of any kind. What we do is pay them a flat salary, \$400 or \$500 a month, whatever it might be. Then he operates on an annual bonus. And the annual bonus, as I have outlined it to you, is established with a sales quota for the number of cars that are in his particular territory, past history and all. It is arrived at in conjunction with the district and zone and the Akron management, the district zone and Akron management. After that is arrived at then these yardsticks of evaluation are used to (4480) arrive at the amount of the salesman's bonus.

# Joseph A. Hoban, Recalled, for Commission-Direct.

Q. In no instance would there be a certain percentage applied to his credit for, we will say, sales of certain items within the TBA field? A. No, sir.

Q. Does Goodrich have field deliverymen, or service men of any type, serving these oil company outlets? A. I don't know that I explained the detail to you, the supply

point arrangements.

Q. Suppose you do that. A. All right. When we sign a contract with an independent Texaco dealer we generally set up a most convenient supply point for him because in this service station business the accounts are small. The manner in which you are able to get the maximum amount of business is to have your particular tires and tubes and accessory merchandise close to the account so that he can quickly get a tire or set of tires at a nearby point. So we establish "X" supply point. Generally speaking that is an independent dealer who principally does, or to a hundred percent in most of the cases, handles wholesale tire business for us. And he would supply anywhere from 25 to 100 or more service stations and car agents and small dealers in a given area.

That independent dealer would be the one that would call occasionally and particularly deliver the merchandise to (4481) the Texaco or other oil company dealer.

Q. Does Goodrich pay that particular dealer or supply point a special commission, or any commission? A. No, sir, no commission enters into the relationship. The supply point is a wholesaler. He buys from us the tires and tubes and accessory merchandise, batteries and the complete B. F. Goodrich line, he buys it on a regular program that we have established for dealers and what is known as a "WA" or wholesale classification.

His volume, of course, is large, because he is servicing, as I tell you, from 25 to maybe 150 small dealers. So the difference between the price that he purchases the merchan-

dise from us and the price that he sells is his gross profit. And he operates out of that difference in his buying price and his selling price and makes his profit out of that.

Q. You used Texaco as an example. I take it that is just a hypothetical instance, and the same thing applies to each of the other oil companies? A. Yes, sir, same identical arrangement applies to all of them.

Q. I have run into the term "casings." What is a

casing! A. A casing is a tire.

Q. That is a tire? A. Yes, sir, it is another word describing a tire.

- Q. In connection with tires alone, casings, are any special (4482) service or sales commissions paid to Goodrich personnel? A. No, sir, there are no sales commissions paid on any merchandise other than I have outlined to you, the opportunity for the B. F. Goodrich salesman to earn his annual bonus on total sales of all commodities.
- Q. Does the name "T. C. Yarnell" mean anything to you? A. Oh, yes, sir. I know him very well indeed.
- Q. Who is he and where is he located? A. He is located in Detroit at the zone office in one of the large automotive buildings in Detroit.
- Q. You are trying to think of his address? A. I am only trying to tell you the building in Detroit in which his office is. It is one of the big automotive business buildings there. He is zone manager for an area that includes a good many of our districts and zones, such as Detroit, Chicago, Cleveland, and other districts and zones. He is a tire replacement zone manager located in Detroit.

(4488) Q. You don't recall the name? A. No, sir.
Our policy on that matter is very clear, very definite.
We never at any time have paid sales commission on con-

# Joseph A. Hoban, Recalled, for Commission-Direct.

sumption business. The oil companies are set up in a certain classification and they buy entirely on an earned bonus basis for their consumption business, whether you are speaking of the Texas Company or whether you are speaking of one of our other customers.

- Q. An earned bonus basis, you say? A. Yes.
- Q. Is that quantity purchases? A. Yes, sir.

(4490) Q. And on Commission Exhibit 268-G, will you tell me whether or not—we have a little difficulty here, we have only the 1957 and 1953 catalogues—are those inclusions and exceptions the same through the years since the contracts were in existence, or have they been modified to any great extent? Will you look them over and consider the categories and tell me whether or not the categories are substantially the same? A. I see only one item here that would have been included during some period, and that is home radios. Small table radios, according to my recollection at various times have been included. All other items have been excluded at all times.

You notice your classification called "Home Radio." Small table radios, as opposed to consoles, have been included over a number of years at different times, and I think maybe still are.

I speak of small table radios. They may not be now, but they have been over some years.

- Q. The items not subject to payment of commission are wheels, that is, with reference to automobile wheels? A. Yes. Rims.
- Q. You have a section in the book dealing with wheel goods and it is bicycles. A. That has nothing to do with it.
- (4491) Q. Rims and parts; what does the parts refer to? A. Nuts and bolts in connection with the rim.
  - Q. In connection with wheels? A. Yes.

Q. How about accessories? What accessories are included? Is there anything in the catalogues? A. Yes; accessories are included.

Q. I didn't mean accessories. I meant repair items, replacement items, such as jacks and— A. Those are

supply items. They have never been included.

Q. How about such items as ignition points and repair items of that general nature? A. We have never sold ignition points, sir.

#### Cross examination by Mr. Barton:

(4492) Q. Mr. Hoban, the sales commission plan includes repair of materials for tires, that is, camelback and things of that kind, doesn't it? A. Tread rubber.

Q. Yes. A. Yes, sir. Tread rubber.

Q. And the sales commission plan, there is a sales commission paid on such products? A. Yes, sir. That is part of the accessories, like fan belts and tread rubber. We consider tread rubber in the classification of an accessory item, such as fan belts and radiators.

Q. Your B. F. Goodrich salesman has a district, doesn't he; in which he handles how many accounts? From 50 to a hundred accounts? A. You are speaking of our territory

manager ?

Q. Territory manager. A. The territory manager would rarely have that many direct accounts. It varies, of course. I would say the minimum a salesman would have would be 25 or 30, and possibly the highest number would be a hundred.

Q. And the B. F. Goodrich territory manager has responsibility for those direct accounts? A. Yes, sir.

Q. And also he works with the accounts who buy from those direct accounts, doesn't he? (4493) A. Yes, sir, with their associate dealers. He works with all of them.

Q. And by and large the Texas service station and the other service stations of the other oil companies are associate dealers, aren't they? A. We have both direct dealers and associate dealers. The majority, of course, are asso-

ciate dealers.

Q. And in these places and in these situations where you have a sales commission agreement with an oil company, the role of the B. F. Goodrich territorial salesman, his job is materially assisted by the oil company salesman who carried the promotional program to the service stations; is it not? A. Oh, yes, indeed. In my previous testimony I went into considerable detail to point out the merchandising assistance that the petroleum company salesman and merchandising personnel give to us. It works two ways. I don't know that you wish me to go into details of it again. But it works two ways.

First, their frequency of contact is so much more than a B. F. Goodrich salesman. They are into the dealers place so frequently that they are able to keep him constantly alerted to the opportunities to sell more of our goods. Texaco, for example, the merchandise salesman very definitely increase the sales of B. F. Goodrich tires and other products through the dealer's station by keeping the Texaco dealer alerted. And the other thing of considerable advantage to us is that by (4494) their frequent contact our particular territory manager doesn't have to call so frequently as he would if he didn't have that assistance. So, we spread him a little farther in covering other accounts.

Q. There has been some reference to the jumbo cards, the mailing piece, by Mr. Dias. Would you explain what those are! A. I went into it at great length on my previous testimony to the leader type merchandise, and the advantages that that has to a small neighborhood Texaco dealer as an example of our petroleum accounts, and where the

jumbo card comes into play is this:

We go to a great deal of trouble in first testing merchandise in a given number of stations, what we call leader merchandise, to find out whether at a certain definite price it will bring extra traffic into the dealer's place of business, so that he can have new faces and new opportunities to make permanent customers. If we find the items after we have tested them as being very successful in bringing new faces into service stations, we go the next year usually to all of our service station customers, with those leader items.

We are national advertisers, the B. F. Goodrich Company. We had for many years the Burns and Allen Texas program, and we are in national magazines across the country.

While at the time that this particular promotion would break, we would have that leader item featured on our national (4495) Texas program, or in our national advertising, and then in order to be table to have the neighborhood dealer cash in on the national advertising, we would have a jumbo postcard which would identify him very definitely in his petroleum connection and the services that he has to offer in petroleum, but in a large way would offer this particular, unusually priced, special or leader piece of merchandise.

He would subscribe to that and maybe in his given neighborhood area he might send out 200 of those jumbo postcards, right at the time that the advertising is appearing in the Saturday Evening Post or the national Texas show is announcing this item.

So, it puts to work, as I explained before, the national advertising at the local neighborhood Texas service station dealer's place of business, and very successfully.

Q. That program is carried on in connection with all of the sales commission arrangements which you have?

A. All of the sales commission customers; yes, sir.

Q. In that situation the jumbo cards are partially paid for by the service station dealer, are they not? A. Oh, yes, sir. He pays for the promotion.

Q. He buys the cards? A. Yes, sir.

- Q. The B. F. Goodrich Company prepares the materials and that is purchased by the participating customer? (4496) A. That's right, sir. He gets back out of the profit that he makes out of the selling of the leader merchandise more than the cost of the promotion; so, it works out very well.
- Q. Mr. Hoban, who makes the Miller line of tires? A. The Miller line of tires are manufactured and have been for well over 20 years by the B. F. Goodrich Company. The B. F. Goodrich Company acquired the Miller Rubber Company back about 1930. The Miller line of tires is part of what we call our associated tire division and have been marketed by B. F. Goodrich since the acquisition of Miller about 1930.
- Q. And prior to the entry of the sales arrangement agreement with Ohio Oil Company, what brand of tires were being handled by Ohio Oil Company! A. Miller brand of tires, manufactured by B. F. Goodrich.

Q. And they were purchasing B. F. Goodrich, is that

right? A. Yes, sir.

Q. And re-selling them to their dealers? A. Yes, sir.

(4498) Q. Mr. Hoban, in connection with the territorial salesmen, is my understanding correct that they have in general 25 to 50 direct accounts in their territory? A. Yes.

Q. But there will be in that territory a geographical territory in which they cover several hundred dealers who

handle B. F. Goodrich merchandise, and who purchase in part through those 25 or 30 direct accounts, isn't that right? A. Yes. I would say you are right except I wish that we had quite that several hundred. I wish that we could have those additional accounts, because we could use that business. I would think, if you would speak of 25 to 50 direct accounts, salesmen handling, and speak of 100 to 150 associate dealers, you are about as high as I could go along with you, although there may be one case in the country to support you where a man might have a couple of hundred of these things, or three hundred.

Q. And the bonus which that territorial salesman receives in addition to his salary is not geared particularly to the sales which are made of B. F. Goodrich merchandise to an oil company which happened to have a sales commission agreement, is it? A. No, sir. There is no connection at all, as far as the salesman is concerned, with the sales commission program. He is given an area and that area has so many cars in it, (4499) Mr. Barton, and on a basis of the car registration plus our previous years of attainment against the potential, we assign him a quota. Where he gets that, whether it happens to be in one territory a hundred percent from independent dealers not connected in any way with sales commission, or in another territory whether 50 percent of it flows through oil companies that happen to be on commission, he has nothing to do with it. He works his territory and takes advantage of whatever exists there. In some places, particularly in New England, we have to live without any supporting business from petroleum companies. We have to sell car agents and tire dealers and farm dealers and implement dealers and get our business entirely through other channels. But the salesman in no way has any concern about whether an oil company service arrangement or sale commission arrangement in fact-he has nothing to do with that.

## Joseph A. Hoban, Recalled, for Commission-Redirect

He goes ahead and sells them as an independent dealer one over one as fast as he can interest them and sign them as a B. F. Goodrich dealer. Then there is no distinction as far as he is concerned or we are concerned. They are all B. F. Goodrich dealers.

Mr. Barton: I think that is all.

Mr. Dias: Does Texaco have any question?

Mr. Royall: No.

## (4500) Redirect examination by Mr. Dias:

Q. Is a territorial sales manager a salesman? A. That

is a glorified name for our tire salesmen.

Q. How often do they call on their accounts? A. I think I tried to explain to you that you can't answer that question with any given one week or two weeks or once a month or anything like that. It depends entirely on the area of the country that you are talking about. In a metropolitan city I would think at least every ten days our salesman would be seeing his accounts. In a sparsely settled area of Washington and Utah and Colorado, we would be lucky to get around there once every six weeks.

Q. That is the State of Washington? A. The States of Washington, Colorado, Utah, Minnesota, North and South Dakota, if he got around there once every six weeks he would be doing well. In between-every ten days or so in a metropolitan area, sometimes more frequently—you would go all the way to this every-six-weeks call, but in between, in the middle section of the country and southern sections of the country, he would be calling every ten days

to two weeks.

Q. You also stated that these territorial managers, or. salesmen, call on 25 to 50 direct accounts, and I think you rightly corrected an over-enthusiastic estimate of 200 (4501) associate dealers to 100 to 150? A. Yes, sir.

#### Joseph A. Hoban, Recalled, for Commission-Redirect

Q. Do I take it from that that also there are instances where there are less than a hundred customers that they call on, associate dealers? A. Yes, sir. You see there might be less. Take the State of Maine as a good example. In the State of Maine we don't happen to have any appreciable amount of service station business. So there our salesman might conceivably be calling on 25 direct accounts and possibly only 50 associate accounts of his tire dealers.

Q. What would you think would be the median figure of associate accounts called on by the territory? A. Called on by them?

Q. Yes. A. They try to call on all the associate dealers, not with any regularity, but I would say in the course of a year a territory manager will have called once or more on every associate dealer.

Is that the question you are asking?

Q. Not exactly. Going back to this 100 to 150 accounts, was it your testimony that the 100 to 150 associate dealers that the salesmen call on, is that over a year's time or is that periodically every week, month, or what? A. It is periodically. For instance, the 25 to 50 direct (4502) accounts—it varies as I told you from let us say once a week to once every six weeks depending on the geographical area that the man covers, whether it is metropolitan, midwest, southern, or whether it is far stick territory.

Then under the man the number of associate accounts vary depending on the type distribution he has. If you go into an area where we have a large congestion of petroleum type business in a metropolitan city, he would call on those associate accounts maybe every month. If you go—

Q. A full hundred to 150 or a lesser number? A. He might not call on every one of them that particular month, but he would average in a metropolitan area making calls

on associate dealers about every month, whereas if it was out in a wide area he might be very fortunate if he got around there from once to two or three times a year to associate dealers. The supply point would be, after the contract had been signed and all, the supply point would be picking up the orders and delivering the merchandise.

Mr. Dias: That is all that I have.

Mr. Royall: Your Honor, will you rule on the motion relating to this witness?

Hearing Examiner Kolb: The objections of the Texas Company to the testimony will be overruled, and the evidence will be received, subject to a motion to strike. That is as to (4503) testimony relative to other oil companies.

(4535) HENRY M. LIVINGSTON was thereupon called as a witness for the Respondents and, having been first duly sworn, testified as follows:

#### Direct examination by Mr. Royall:

Q. Mr. Livingston, what is your name? A. Henry M. Livingston.

Q. And where do you live? A. At 106 East Forest Hill,

Peoria, Illinois.

Q. What is your occupation there? A. Service station operator.

(4536) Q. Is it a Texaco Company filling station? A.

Yes, sir.

Q. Where is it located? A. At 3036 North Knoxville, Peoria, Illinois.

Q. What is your average monthly gasoline gallonage there? A. Approximately thirty thousand.

Q. Are you a lessee of the Texas Company? A. Since '52—April, '52.

Q. Is a particular tire company named as—is a particular tire company sponsoring your station, and is it Goodrich? A. No. sir.

Q. Has Texas proposed to you or suggested to you sponsorship of Goodrich products? A. Yes, they do.

Q. Did you at any time agree to buy Goodrich products?

A. Yes, sir.

Q. And do you buy some Goodrich products? A. Now? Q. Yes. A. No, sir.

Q. Now, do you carry a rather full range of TBA in your station? A. Yes, sir.

Q. Do you buy from Goodrich small items from time to time, or do you buy any now? (4537) A. No, sir, we don't.

Q. Did you at one time buy part of your batteries and part of your thermostats from Goodrich? A. Yes, sir.

Q. Now, from whom do you buy your tires? A. Peoria Tire & Vulcanizing; the biggest percentage of them.

Q. And what brand of tires do they sell? A. U. S. Royal.

Q. Where do you buy your batteries? A. We buy our batteries through the Globe Auto Supply.

Q. And what is their product? A. Their battery product is Red Diamond. That's—I might add that the biggest bulk of our batteries is purchased there.

Q. Yes, sir. And do you buy batteries, any batteries, from Goodrich? A. No, sir.

Q. Now, what are some of the other suppliers from whom you purchase tires, batteries and accessories? A. Well, we'll buy an occasional—we'll have an occasional purchase through Firestone, and perhaps an occasional through Goodrich, and an occasional Goodyear; and acces-

sories we purchase from Globe Auto, Peoria Electric

Appliance, Vork Auto Supply, and-

Q. Do you purchase any from—did you give the name Peoria Machine & Parts? (4538) A. Peoria Machine & Parts—yes, that's another.

Q. All right, sir. Now, does Texas Company representatives know the products you buy, your TBA products

you buy? A. Yes, they do.

Q. And have they known that over a period of time you've been buying them? A. Yes, I think they have.

Q. How long have you been buying these non-sponsored products, that is, products that are not Goodrich, or not

Firestone? A. Well, I'd say three to four years.

Q. Now, has the fact that you have purchased these non-sponsored items affected your relationship with the Texas Company adversely in any way? A. Not to my knowledge, sir.

Q. Has there been any—have there been any efforts to force you to buy them, buy sponsored products? A. No.

Q. Have there been any threats in connection with the fact that you buy so many non-sponsored products? A. No.

Q. Has there been any change in your lease as a result

of those purchases? A. No.

Q. Has there been any suggestion of a change in your—from Texas, any suggestion from Texas, of any change in your (4539) lease on that account? A. No.

Q. Now, Mr. Livingston, does Texas render any assistance to you in connection with your sale of TBA? A. Yes,

I'd say they do.

Q. What are some of the ways in which they assist you? A. Well, there is the spring and fall dealer meetings, as well as the meetings at other intervals, where the merchandising of TBA are discussed, at those particular meetings; and their various publications that are mailed periodically, which are all very helpful.

Q. Have these matters in which Texas helped you—have they continued up to the present time and during the entire period of your purchase of non-sponsored goods?

A. You mean, do I still receive them?

Q. Yes. A. Yes; sure.

Q. And you have at all times, haven't you? A. Sure.

Q. Now, from your experience in this station, and your observation, does a TBA program—is the TBA program helpful or necessary to the operation of a modern filling station, service station? A. Yes.

Q. Do you know whether it is helpful in the sale of gasoline! (4540) A. Yes, I conclude that it is; sure.

Q. I don't think I've asked you this. Are all the products that you carry displayed in your station? A. Yes; all that we have room for.

Q. Are they visible to anyone who comes in your sta-

tion? A. Oh, sure.

Q. I hand you six photographs—will you assign numbers to them, your Honor?

Hearing Examiner Kolb: Mark them Respondent's Exhibits Nos. 37-A through F for identification.

(The photographs referred to were marked Respondent's Exhibits 37-A through F for identification.)

### By Mr. Royall:

#### Q. I hand you-

Mr. Dias: May I see them first?

Mr. Royall: Oh, yes. We have here, Mr. Dias, the same pictures with notation on the back showing the products that are carried. It would shorten the evidence if it would not be necessary to examine the

witness or to call the attention of the Examiner to

the products.

Mr. Diss: I, think you better ask him. I might look at these while you're examining him. Let me make sure we have them in the same order.

Mr. Royall: I want to give them back and ask

him about them.

(4541) Off the record, if I may.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Royall: I've got to give those to the witness and read from the back of those. That's why I was trying to save time.

This one should have been offered too. I beg

your pardon. Will you just add that?

Hearing Examiner Kolb: Is that the same station?

Mr. Royall: Yes.

Hearing Examiner Kolb: Two more or one more?

Mr. Royall: One more.

Hearing Examiner Kolb: Mark it Respondent's Exhibit 37-G for identification, then.

(The photograph referred to was marked Respondent's Exhibit 37-G for identification.)

Mr. Royall: The witness will appear to identify that too, Your Honor. He will do so, if you desire.

#### By Mr. Royall:

Q. This is also a picture of your station, is it not? A. Yes, sir.

Mr. Royall: That refers to, Your Honor—37-G. It is reoffered now.

Hearing Examiner Kolb: Off the record. (4542) (Discussion off the record.)
Hearing Examiner Kolb: Proceed.

#### By Mr. Royall:

- Q. Mr. Livingston, are these pictures, Exhibits 37-A to G, correct pictures of your station and the goods displayed and shown therein? A. Yes, they're certainly identical—that one.
  - Q. Well, these are the same ones? A. Yes. These.
- Q. Are they representative of your station and these products, and the showing of them over the past several years? A. Yes.

Q. T see.

Your Honor, we offer these pictures in evidence.

Mr. Dias: Well, may I ask the witness a few questions about them?

Mr. Royall: Yes, sir.

Mr. Dias: Mr. Livingston, when were these pictures taken?

The Witness: Well, I'd say approximately six weeks ago six to eight weeks. I just don't think I remember—

Mr. Dias: And do you know who took them? Did you take the pictures yourself?

The Witness: No, I didn't.

Mr. Dias: Do you know who did take them? (4543) The Witness: Mr. Hanson.

Mr. Dias: And who is Mr. Hanson?

The Witness: Well, he's a Texas Company representative in some respect. I don't know what his title is.

Mr. Dias: Isn't he your salesman?
The Witness: No. sir.

Mr. Dias: Had you ever seen him before?

The Witness: Yes.

Mr. Dias: And you don't know his title?

The Witness: No, I don't.

Mr. Dias: Did he explain to you why the pictures were being taken, or did he just walk in and take them!

The Witness: No, explained to me.

Mr. Dias: And what did he say about it?

The Witness: He just said that he'd like to have permission to take several pictures in there in view of some evidence, if I recall, or that he might like to have in the future, or if that was he wanted to be sure that was our regular display. In other words, he didn't he more or less asked for permission to take the pictures. As'I questioned him and asked him why—

. Mr. Dias: All right. No objection.

(4547) Q: The question is, what items on there, shown on this first picture, were not purchased from Goodrich or Firestone. A. Well, there isn't any of these items on here that are purchased from either Goodrich or Firestone.

Q. Now, what are the items appearing on there! A.

What are the items?

Q. Yes, sir. A. Well, Red Diamond batteries, and there's several accessories, such as exhaust deflectors, li-

cense plate brackets, and so forth, there.

Q. Now, on the second picture, what are the principal items there that were not purchased from Goodrish or Firestone. A. Well, there's also Red Diamond batteries there, and I see some anti-freeze there that's—they're not purchased from either of the two sources.

- Q. Is U. S. Royal tubes on there? A. There are U. S. Royal tubes. They're not purchased from Goodrich or Firestone.
- Q. And on the third one, what are some of the principal items not purchased from Goodrich or Firestone?

  A. Well, I've got Merit mufflers here that are not purchased from either Firestone or Goodrich, and—that's about all I see there.
- Q. Now, on the third—the next picture, 37-D, what items (4548) on there, what principal items are on there not purchased from Goodrich or Firestone! A. Well, as near as I can see, there's tires that are not purchased from them, either Goodrich or Firestone, and some hoses there—this happens to be garden hoses—that are not purchased from Goodrich or Firestone; windshield wipers, blades, that are not purchased from Firestone.
- Q. Now, from No. E, which is the next one, name some of the principal items. If you've already named them do not name them again, but any new items, principal items, that are not purchased from Goodrich or Firestone. A. Well, the principal items here are filters, which are not purchased—oil filters and air filters—which are not purchased from Goodrich or Firestone.
- Q. Now, No. F, that's the next one. What items are shown there that are not purchased from Goodrich or Firestone? A. Fan belts, Gates fan belts, which are not purchased from Goodrich or Firestone.
- Q. Now, does the last picture represent the appearance of your station now and for several years past? A. Well, except for the sign out there in the front. We've had that sign up there perhaps eighteen months.
  - Q. I see. There is a sign about mufflers? A. Yes.
- Q. But aside from that, does that represent the appearance of (4549) your station over a period of years? A. Yes, it does.

Q. Thank you, sir. Now, has any Texas representative at any time requested you to remove or to hide any of these products which you display in your station? A. No, sir.

Q. Mr. Livingston, do you consider yourself to be entirely free and independent in purchasing such TBA as you wish to purchase? A. Yes.

Q. And from such sources you wish to purchase? A. Yes, sir.

Q. Has that independence and freedom of choice been challenged at any time by any representative of the Texas Company—the right, your right, to do it? A. Well, I'don't exactly understand what you mean by "challenged."

Q. I mean, have they discussed with you whether you are free or not, or whether you are have the right to buy what you want? A. Oh, yes. They've pointed out that it's our privilege to buy from whom we would like to buy.

Q. New, Mr. Livingston, have you had offers of other

stations of large oil companies? A. Yes.

(4550) Q. Do you know from your experience in the business whether it is difficult for the large oil companies to get good station operators? A. My conclusion would be, yes, it is difficult.

Q. Is it difficult to—is it difficult, on the other hand, for a good station operator to get a station? A. No, I.

wouldn't say it would be difficult.

Q. Is your station doing well? A. Yes.

Q. And is it doing well on TBA! A. Yes.

Q. Has your success on TBA reflected itself in your gasoline sales! A. Yes.

### Cross examination by Mr. Dias:

- Q. Mr. Livingston, you just mentioned that good operators are hard to find. How long has that condition existed in Peoria? A. Well, sir, my conclusion on that is what I gather myself from the rumors that I hear. If I were to have a position of that kind, looking for operators, I might be surprised. But that's just my conclusion, and I'd say it's existed just about as long as I've been interested in this type of business.
- Q. Is there any reason for that? Is there a big industry (4551) in Peoria that takes up prospective station operators? Is that the reason you reach that conclusion? A. No, that isn't the reason I've reached the conclusion. My reason for reaching the conclusion is that perhaps the prospective station operator is expected to put in perhaps longer hours and money that perhaps he hasn't got, and so forth.
- Q. Well, how much money, for example, does it cost to open up a station? A. Well, I'd say a station of my—the station that I've got now would probably cost about eight to ten thousand dollars.
- Q. Is that what you invested in it when you opened up?
  A. No, sir.
- Q. I see. How much did you invest in it? A. I'd say \$2,500.00.
- Q. And what was that for? Was that for stock, including gas? A. That was for practically all inventory I might say.
- Q. Was this a new station that you took over? A. No, sir.
- Q. What type of TBA was in the station when you took over? A. Well, if I recall right, it was Goodrich TBA, a few tires, and a few accessories, and such as that.
- Q. Do you recall your negotiations with Texas Company to obtain the station? A. Pretty much so.

- Q. Do you recall that they suggested that you purchase either (4552) Goodrich or Firestone? A. Yes, I recall that.
- Q. And if I understand your testimony, apparently you purchased Goodrich to begin with, is that correct? A. Yes.

Q. Can you tell us how long you continued to purchase Goodrich? A. Oh, I'd say approximately two years.

- Q. Commencing in '52 until about— A. April of '52, I think it was.
- Q. When you moved in did you supplement the inventory that you found in the station? Did you buy additional tires, batteries, accessories, and so on? A. Not right away. We were in a rather peculiar circumstance there. In other words, the area in that particular—the roads in that particular area were closed due to some highway construction, and it was shortly, within maybe six, eight months after that, we did increase our inventory with Goodrich.

Q. Who was your Goodrich supplier in that location?

A. Well, all I ever knew him by was B. F. Goodrich, that's all

Q. Was it a Goodrich store? A. Yes.

Q. Oh, I see. And where are they located? A. South Washintgon.

Q. Was that fairly close to your place of business? (4553) A. Yes, it's a short distance.

Q. And how did they deliver their merchandise to you? Did they have a regular TBA truck? A. Yes, they have a TBA truck, and sometimes with a personal representative's car.

Q. Which personal representative? Goodrich? A. Yes.

Q. How about Texas? Did the Texas representative ever come around with him? A. Not to my recollection.

Q. Now, you continued to purchase Goodrich for about two years, and then you discontinued. Why did you dis-

continue? A. Well, we had a lot of difficulty in obtaining merchandise, various sizes, and of different tires, and different batteries, and—in other words, the delivery was—you might sum it up by saying that the delivery was very poor and they just couldn't supply the merchandise and the quantities of merchandise that we wanted.

Q. Did you mention that fact to Texaco at all? A. Oh,

yes. We had quite several discussions about it.

Q. With whom in Texaco! With whom did you discuss that? A. Well, I discussed it with—with the exception of the first representative that ever called on me, who I think was a fellow by the name of Tom Hughes, Texas Company—I've never discussed with him too much but from then on with two, (4554) three or four Texas Company representatives. I've talked it over very thoroughly with them. They in turn made efforts to clear up the situation.

Q. Well, did you finally tell them that you couldn't do business with Goodrich because of the poor service, and

so on? A. Yes.

Q. Did they recommend that you try Firestone? A. Yes.

Q. And did you try Firestone? A. Well, I—I'd say, yes, we tried them.

Q. And where was the Firestone supplier located? A. He's located on West Main Street.

Q. Is that close to your place of business? A. About the same distance.

Q. How was their service? A. Well, their service, from what I could gather, what little experience I had with them, wasn't any better than what I'd dumped, you might say.

Q. What was your gasoline gallonage around that time? Do you recall? A. Well, our gasoline gallonage has increased—in those years I've been in there, let's say, has increased anywhere from—anywhere from perhaps 8,000 to—I would take it back a year and a half ago—to 25,000.

Q. Today you're doing 25,000 a month? (4555). A. Today we're doing approximately thirty.

Q. I see. Well, when was it you were doing 8,000? A.

Well, that's when we first took the station over.

Q. Then in the next two years where did you build it to? Can you give us some rough idea? A. I'd say in the next two years we built it to approximately 17,000—15,000 to 17,000.

Q. That was about the time that you were having difficulty with the Goodrich and Firestone suppliers? A. Yes.

Q. Do you know—do you do any repair work on that station? A. Yes. You mean on the station or in the station?

Q. In the station. Yes. A. Yes. That is, light work.

We do light work. We don't have any-

Q. Can you recount for us the situation when you finally decided to give up on both Goodrich and Firestone as poor sources of supply? Was there any discussion between you and the Texas people? A. Yes. As I said before, there was quite a lot of discussion. The Texas Company representative was very interested in our, say, obstinate decision, and wanted to know the real facts. He pointed out that they would like to have seen us continue with Goodrich and/or Firestone. But inasmuch as they couldn't do (4556) anything for us, why—well, that didn't leave any alternative.

Q. I see. What sort of hours—you mentioned hours before, that that might be a controlling factor in getting an operator. What sort of hours do you maintain in your station? A. Well, are you speaking of at the present?

What we've been experiencing?

Q. Yes. Well, let's start right at the beginning. When you opened your station what hours— A. Well, when we first opened the station, of course, the hours were long and I'd say anywhere from ten to fourteen hours a day.

- Q. And was that your own choosing or was that suggested when you took over the station? A. No, that was our own choosing.
- Q. I see. And thereafter what sort of hours did you maintain? A. Well, we were at 7:00 to 10:00, to that's approximately thirteen hours, fifteen hours.
- Q. And are those the hours you are maintaining now? A. Yes.
- Q. Getting back again to the time when you first opened your station, unlike the present time, was there Goodrich decals and signs advertising the Goodrich TBA products? A. At the first?
  - Q. Yes. A. Yes.
- (4557) Q. And you maintained that while you dealt with Goodrich, of course? A. Yes.
- Q. What is your TBA volume at present, Mr. Livingston? Do you have any idea? A. Well, I'd say 25%. That's—25% of our volume, approximately, our gross volume of business, is TBA. That's not counting gasoline and petroleum.
- Q. Now, included in TBA, do you include mufflers and hard parts, repair parts? A. Yes.
- (4558) Q. Well, just confine your answer then to tires, batteries, filters, radiator hose, or belts, spark plugs—A. I'd say—it's hard to give you—it would have to be an awful long approximate figure, because it's without—

Q. Well, do you do a substantial amount of business in that? A. Yes, I'd say "substantial" and cover it.

Q. And would substantial be \$1,000.00 a month, \$2,000.00 a month? That is, just some rough idea of the amount of business you do in those items. A. Well, I'd say—now, you're including tires and batteries?

Q. Yes. A. I'd say 800 to 1,000.

- Q. I see. Are these new— A. A month.
- Q. Excuse me. Did you have something further? A. A month, I'd say.
  - Q. Oh, a month. Yes. A. Yes.
  - Q. Do you handle only new tires? A. No.
  - Q. Well, do you handle new tires too? A. Yes.
- (4559) Q. You handle new tires and recaps both? A. Yes.
- Q. Do you do any recapping at the station? A. No, we don't do any recapping. We handle used tires. I thought that's what you were referring to.
  - · Q. Well, I want to find that out too.

May I see Exhibit 37-A?

That machine on Respondent's Exhibit 37-A, is a credit machine, isn't it, to stamp— A. Yes, that's an imprinter.

- Q. Imprinter for the credit card? A. Yes.
- Q. You only charge gasoline on that, do you not? A. No, I occasionally put down other items on there.
  - Q. Such as Royal tires? A. Yes.
  - Q. Batteries? A. Yes.
- Q. And all these other items? A. Yes. I occasionally put them on there. I might say this, that I wouldn't let the fact that I'm going to lose a sale stand in my way on it. If I couldn't sell the merchandise any other way than on a Texas credit card I'd put it on there.
- Q. Well, do you note on the credit slip then that this is a U. S. tire, or a— (4560) A. No, I don't.
- Q. You do not. What do you call it? A. Oh, I call it a Goodrich or a Firestone: And I have left it blank.
- Q. I see. Well, why don't you just put U. S. Royal on the thing if that's what you sold! A. Well, I do know what it says on the back of the credit card, and perhaps the reason I don't is I might meet with some opposition if I did put it on there. As I say, I wouldn't want to lose the

sale. I've never been reprimanded on it, so I just continue to do it.

(4561) Q. You mentioned these dealer meetings, they discussed TBA sales, and spring and fall dealer meetings, and others. Are Goodrich and Firestone products mentioned during those meetings? A. Yes.

Q. And have you ever seen representatives of Goodrich

and or Firestone at those meetings? A. Yes.

Q. Are they usually there! A. Yes, I'd say they are usually there.

Mr. Dias: I believe that's all.

### Redirect examination by Mr. Royall:

- Q. One or two questions, Mr. Livingston. Do you know whether or not entering other items of TBA on Texas credit cards is a common practice? A. From what I hear I understand it is.
- Q. And in your case, Texas Company knows you do not buy Goodrich and Firestone tires, do they not? A. Yes.
- Q. And have they ever protested at any time on your entry (4562) on a credit card, of tires? A. No.

Q. Never have? A. No.

Q. Now, the decals that you had for Goodrich, where did you get them, from the Goodrich Company! A. No, they were already on there.

Q. Already on there? A. Yes.

- Q. Now, Peoria is in the Chicago Division, is it not, and Mr. Hansen came to see you from Chicago, did he not?

  A. Yes, sir.
- Q. When did you start buying U. S. Royal tires, at the end of two years of operation? A. Well, that—I'd have to

Henry M. Livingston, Recalled, for Respondents-Recross

trust my memory an awful lot, but I'd say it was at the end of—at the end of my first two years or perhaps before.

Q. Before. I see. And you didn't buy Firestone tires for any appreciable period, did you? A. No, sir.

(4564) HENRY M. LIVINGSTON was thereupon recalled as a witness for the Respondent and, having been previously duly sworn, testified further as follows:

## Recross examination by Mr. Dias:

- Q. When you went in, in 1952, you signed one of these leases—Commission Exhibit 18—is that correct? A. Yes, sir.
- Q. And it ran for one year, did it? A. To my knowledge, it did.
- Q. And have you renewed it each year, or are you still operating under the same lease? (4565) A. As near as I can recollect, the first lease that I signed, I signed when I went in in 1952. I don't remember seeing another piece of paper until we moved across the street, at which time I had another one.
- Q. You mean you are not in the same station now that you were in when you first went in? A. No.
- Q. Tell us a little bit about that, will you! I thought you were in this same station all along. A. We are in the same corner, but not in the same location. In other words, when I first leased from the Texas Company in April of 1952, I remained there until real estate negotiations were made to move the Texas location from there to directly south, across the street.

## Henry M. Livingston, Recalled, for Respondents-Recross

- Q. And how long a period expired? In other words, you went in in April of 1952, into the old station. When did you go into the new station? A. I will make it easy for myself; I have been in the new station two years last August. What is that? About two and a half years we have been in the new station.
- Q. I see. And when you went into the new station, what did you do with the supplies that you had in your old station—T. B. A. supplies? A. We just moved everything across the street.

(4566) Q. At that time did you have Goodrich TBA?

A. We had some.

- Q. It was prior to the time you moved, though, that you started to discontinue Goodrich and Firestone. A. Started, yes.
- Q. I notice in this lease, too, there is a fixed sum per month and an additional amount per gallon. Has your rent been increased over the years? A. Well, I can't answer that particular type of question. We are operating on what is to us a gallonage basis rent figure.
- Q. Your rent is figured strictly on the gallon? A. Well, not exactly. There is a maximum there.
- Q. Well, do you pay a flat amount per month, plus so much per gallon? Is that the way you do it? A. That is the way we have been operating up to now.

(4567) Q. What equipment on that station is owned by Texaco? Is it all the equipment? Exhibit 18 refers to certain property; the lease refers to buildings, improvements, fixtures, tools, equipment, facilities. What type of material, such as that, are in your station? (4568) A. Well, the only thing that is owned by the Texas Company is, let us say, the compressors and any fixed piece of equipment, such as pumps. Outside of that, they don't own—

- Q. You own all the rest, other than those that are fixed. is that it? A. Yes.
- Q. I see. A. And I think the office furniture belongs to the Texas Company. I am sure of that. The desk and a couple of chairs, and perhaps the furnishings in the rest rooms.
- Q. You do not own any part of the property. A. No. sir.

### Redirect examination by Mr. Royall:

- and the second Q. As I understand it, they gave you a new lease some years after you had taken over U. S. Rubber and other, non-sponsored goods, did they not? A. Yes, sir.
- (4569) EDWARD J. MIDDEN was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

### Direct examination by Mr. Lorengen:

- Q. Give you full name to the stenographer. A. Edward J. Midden.
- Q. Where do you live? A. 913 South Passfield, Springfield, Illinois.
- Q. And what is your occupation? A. Service station operator.
- Q. What is the location of your station? A. The correct address is 644 West Monroe.
- Q. And what town in Illinois is it in? A. Springfield, Illinois.
  - Q. Is that in the Chicago Division? A. Yes, sir.
  - Q. Are you ever visited by Mr. Hansen? A. Yes, sir.

Q. And is he the TA man from the Chicago Division?
A. Yes. sir.

Q. Do you lease any of the property at this station from the Texas Company? A. I lease the station from

Texaco, yes, sir.

Q. Do you have one of the standard form leases? (4570)
A. I couldn't tell you; I have never seen it. I mean I have

seen it, but I don't remember it.

Q. How long have—tell me how long it has been since you have had a look at your lease? A. Well, I signed one when I went in ten years ago, and then they put on another bay, and I signed another lease; but I must be very lax, because I don't remember the lease at all.

Q. In between have you had any occasion to look at it or negotiate a new one—I mean negotiate about the lease? A.

No, sir.

Q. I show you Exhibit 18 in this case, and I ask you particularly whether you know if your lease contained a provision such as this one, which reads: "This lease shall remain in full force and effect for the period of one year, beginning—"—then a date—"—ending—"—then a date—"—and thereafter from year to year, subject to the termination by either party at the end of the first year or any subsequent year on ten-day notice." A. I couldn't tell you, because I know they gave me a lease, but I didn't really pay any attention to it.

Q. Is it your understanding that it is on a year-to-year basis? A. That is what I understand, yes, sir.

- (4571) Q. How long have you been a lessee of the Texas Company at this location? A. It will be ten years next October the 1st.
- Q. Was that an existing station at the time you took it over! A. Yes, sir.
- Q. Was there any TBA in the station at the time you took it over? A. Yes, sir.

Q. Do you happen to have any recollection as to what kind of TBA was in there? A. Let's see. They had Goodyear, Goodrich, and Gates tires—just a few. They had 122 batteries—all dead.

Q. What kind? A. Am-Plus. And I took about 25 Gates belts, 50 tailpipes out to the junk yard and sold them.

It was old stock. It was just a conglomeration.

Q. Did you buy that conglomeration of TBA from your predecessor? A. I bought it from his wife.

Q. What happened to the lessee? A. He died three

months prior to when I bought the station. .

Q. Did the Texas Company representative know that you were buying all of this TBA, including the 122 Am-Plus batteries? (4572) A. Yes, sir.

Q. Did he raise any objections to it? A. No, sir; in fact he was tickled to get rid of them for her. She was

in pretty bad shape.

Q. And did you sell those Am-Plus batteries at the station? A. Yes, sir. I worked them up, and read all I could on the batteries, charged them, discharged them, and I got out pretty good on them.

Q. What is the gallonage of your station now? - A. Be-

tween 28,000 and 30,000.

Q. Is that a month? A. A month, yes.

Q. Do you-well, that's an average. A. Yes, sir.

Q. Do you handle it—TRA—in that station now? A. Yes, sir.

Q. Your experience did not discourage you, then? A.

No, sir.

Q. Will you tell us the reasons for handling TBA? A. Well, without TBA it would be pretty hard to make a good living in a service station; and the more you can do on a person's car when you get the car in there, the more satisfied they are going to be, and naturally the more money you are going to make.

(4573) Q. Do you figure that it increases your gasoline sales, too? A. Oh, definitely.

Q. That is, getting the cars in there for TBA helps you

sell the gasoline. A. It works both ways.

Q. During the time when you have been in that station of yours, have you understood that the Texas Company recommends that its dealers handle either Firestone or Goodrich or both lines of TBA? A. Yes, sir.

Q. Will you tell me has it also been your understanding that you could handle any type of TBA you chose? A.

Yes, sir.

- Q. And you have had both of those understandings throughout the time you have been in the station. A. Yes, sir.
- Q. Has anybody from the Texas Company ever indicated to you during the time you have been in that station that it was not the policy of the Texas Company that you might handle any TBA you wanted to handle? A. Indicated—
- Q. Perhaps that question is a little complicated. Let me take it back. Has anyone of the Texas Company told you that if you did not handle the sponsored line of (4574). TBA your lease would be cancelled? A. No, sir.

Q. Or that the Texas Company would treat you badly

in any other way? A. No, sir.

Q. That they would refuse to pave your driveway? A. No, sir.

Q. Or refuse to paint your station? A. No, sir.

Q. Nothing like that has happened. A. No, sir.

Q. Will you tell us, insofar as you can remember, the suppliers from whom you now buy your TBA? A. Well, I buy most from Harwood Auto Supply.

Q. And that is not either a Goodrich or Firestone dealer, is it? A. No, sir. I buy from Goodrich. A very little bit, once in a while, from Firestone; very little bit from Good-

year and U. S. Royal. And then my big other supplies, outside of the tire stores, are Harwood Auto Supply, Springfield Auto Supply, Gietel Brothers, and Sieg Automotive.

Q. You also do a little bit of business with Staab Battery Company, don't you? A. Yes.

(4575) Q. Do you buy substantially all your batteries from them? A. Practically all. Possibly one per cent of Willard, and ninety-nine per cent of Staab.

Q. Now, I think perhaps the record is not quite clear on this: After you said you bought from B. F. Goodrich, you said "very little." I think you meant very little from Goodyear and— A. Practically nothing, but I have bought from them.

Q. But you do buy most of your tires from Goodrich. A. Most of my tires from Goodrich. But if a person indicates that they want another type of tire, I will get whatever they want, including Atlas.

Q. And you have sold them Atlas? A. I have sold Atlas.

Q. When you do that, do you keep those other tires at your station? A. Yes. I had an Atlas there I got stuck with once. It was there for about almost a year.

Q. What finally happened to it? A. I tried to sell it to one of the Texaco boys, but it didn't work. I finally sold it at cost.

Q. During that year that the Texas Company representative came around, the year that the tire was in your station, did he, the Texas Company representative, ever ask you to get that tire out of the tire rack? A. No, he didn't.

(4576) Q. Or did he ever ask you to get rid of it? A. No, he didn't.

Q. Has anything like that been said to you about your Staab batteries or Gates fan belts? A. No, sir.

- Q. Or about any of this non-sponsored TBA? A. No, sir.
- Q. Has any threat been made to you that your lease would not be renewed if you did not get rid of this stuff? A. No, sir.

Q. Now, do you have all of the TBA which you handle openly displayed in your station? A. Yes, sir.

Q. And do you have the brand names openly displayed in your station? A. Yes, sir.

Mr. Lorenzen: I ask to have these photographs marked Exhibit 38-A, -B, -C, -D, -E, -F, -G.

Hearing Examiner Kolb: They may be so marked.

(The photographs referred to were marked Respondent's Exhibits 38-A, -B, -C, -D, -E, -F, -G for identification.)

#### By Mr. Lorenzen:

- Q. Will you look at these pictures, Mr. Midden, Exhibits 38-A through -G, and tell me whether you recognize (4577) those as being pictures taken in and about your station? A. Yes, sir; they are.
  - Q. Who took those pictures? A. Mr. Hansen.
- Q. He is the TBA representative of the Texas Company, do you know? A. Yes, sir.
- Q. At the time those pictures were taken, did you know that the Texas Company wanted them to use in connection with some evidence? A. Yes, sir.
- Q. Was any special preparation made at all in your station before those pictures were taken? A. No, sir.
- Q. Is that exactly the way your station looked at the time Mr. Hansen came in? A. Yes, sir.
- Q. And would you say that is typical of the way your station has looked over the past few years? A. Yes, sir.

Q. I don't mean the identical display; but that is the

type of setup, is that right? A. Yes, sir,

Q. Now, do you have any Goodrich decals in your window which do not show in these pictures? (4578) A. No, sir.

Q. But you have a big lot there, do you not!- A. Yes,

sir.

Q. And on the way down in one end of your lot, you do have a Goodrich sign, do you not? 'A. Yes, sir.

Q. That does not show in these pictures. A. No, sir.

Q. Because the sign is not close to your station. A. About a half a block.

(4579) Q. Exhibit 38-A is a sign which shows you handle Walker Mufflers, is that right? A. Yes, sir.

Q. And there are mufflers that are also sold in the Firestone line, is that correct? Do you know that? A. I don't know that.

Q. And Exhibit 38-B shows what? Gates Radiator

Hoses! A. Gates Radiator Hoses, yes.

Q. And that is a Gates sign on top of your rack. A. Yes, sir.

(4580) Q: It has "Gates" on there perfectly clear,

hasn't it? A. Yes, sir.

Q. And in Exhibit 38-C? A. Zerex and Prestone.

Q. And you do not get either Zerex or Prestone from a Goodrich or a Firestone supplier, is that right? A. No, sir.

Q. This work bench, which shows the additional Staab battery, Exhibit 38-D, is the picture about which you testified when Mr. Dias asked you questions just now, is that correct! A. Yes, sir.

Q. Exhibit 38-E shows your display rack, does it? A.

Yes, sir.

Q. For Staab Batteries. A. Yes, sir.

Q. Do you display any Goodrich or Firestone batteries?

A. No, sir. I have one Willard on there.

Q. Yes. In addition to the Staab, on Exhibit 38-E, you have one Willard. A. Yes, sir.

Q. And the name of that appears plainly on the display and in the photograph, does it not? A. Yes, sir.

Q. On Exhibit 38-F you have what is known as an additive. (4581) A. Yes, sir.

Q. Wynn Furniture Proofing, is that right? A. Yes, sir.

Q. That is not a chemical that you obtain either from Firestone or from Goodrich, is it? A. No, sir.

Q. And that sign is right out in front of your store, is it not? A. Every day, yes, sir.

Q. Then you have some Willard Battery Cables. A. Right.

Q. And those are not bought from either Firestone or from Goodrich. A. No, sir.

Q. Those are displayed, as Exhibit 38-G shows, on a rack with large letters, "Willard," on it, is that correct, Mr. Midden? A. Yes, sir.

Q. Taking all of your TBA—and I am excluding from that now anything like repair parts; don't take clutches or ignition parts or carburetors when you try to figure this out—can you tell us about what per cent of all of your TBA sales are in tires and batteries? A. Oh, I would say it would run about eight to ten per cent tires and batteries; each; and then about (4582) eighty per cent others.

Q. And substantially all of that eighty per cent others—that is accessories—is bought from some place other than Firestone and Goodrich. A. Yes, sir.

Q. And all of your batteries are bought from a source other than Firestone or Goodrich. A. Yes, sir.

- Q. Does the Texas salesman representatives who call on you of course know that you display all of this TBA? A. Oh, yes.
  - Q. Have they ever told you to remove it? A. No, sir.
  - Q. Have you ever been told to hide it? A. No, sir.
  - Q. Put it under the counter? A. No. sir.
- Q. Or has it ever been said that your lease would be cancelled if you did not stop displaying it? A. No. sir.
  - Q. You do handle the Goodrich tires. A. Yes, sir.
- Q. Do you find that your customers have a demand for tires of a known national name? A. Yes, I think so.
- (4583) Q. Do you find those easier to sell? A. Yes, sir.
- Q. In addition to Goodrich, there are some other tires that would meet that qualification, are there not? A.'I think I could sell equally well Goodrich, Goodyear or Firestone.
- Q. And why did you select the Goodrich instead of the Firestone or the Goodyear? A. Well, before I was in business I always had Goodrich tires on my car, and I just preferred Goodrich tires.
  - Q. Are you sold on them? A. Yes, sir.
- Q. Do you find they are easier to sell when you are sold on them? A. I couldn't sell anything if I wasn't sold on it.
- Q. Is that the reason why you handle the Goodrich line? A. Yes, sir.
- Q. Do you find that the Texas Company is of any help to you in merchandising your TBA? A. Oh, yes.
- Q. Will you tell us what they do for you? A. They have national advertising and television, radio, and we have our Spring and Fall dealers meetings and our meetings in between; and we can get any help from the salesmen that we need.

#### **JA 1378**

### Edward J. Midden, for Respondents-Cross

Q. Do you get it? (4584) A. Yes, sir.

Q. Has any of that help ever been denied to you because you handled Staab Batteries and all these unsponsored accessories? A. No, sir.

Q. When you leased that station, the lessee ahead of you was also a Texaco dealer, was he not? A. Yes, sir.

Q. And he, too, leased from the Texaco Company. A. Yes, sir.

#### Cross-examination by Mr. Dias:

Q. Mr. Midden, you stated that you took the station over ten years ago, is that correct! A. Ten years ago next October 1st.

Q. That is the same station you have been in continuously; you are just talking about the one station. A. Yes, sir.

Q. I take it that it was pretty much run down when you bought it. A. Yes, sir.

Q. That was 1948, was it? A. Yes, sir.

(4585) Q. Can you tell us a little bit about your negotiations for that station? Did you discuss the taking up, the purchasing of the station with the Texaco people? A. Yes, sir.

Q. Did they recommend then, at that time, that you purchase either Goodrich or Firestone TBA? A. Yes, sir.

Q. Which one did you choose? A. Goodrich.

Q. You chose Goodrich. Were supplies hard to obtain at that time? A. There was some supplies hard to get, yes, sir.

Q. For example, which ones in particular? A. Well, tires were pretty hard to get at that time; and batteries were coming back in pretty good at that time.

Q. How about hose and belts and that type of thing?

A. That was all coming in pretty good. Tires were the hardest things to get at that time, if I remember correctly.

Q. After you moved in, did you purchase a supply of

Goodrich TBA! A. No.

Q. You did not. A. No, sir:

(4586) Q. You just took on tires at that time. A. Just tires.

Q. Do you recall your gallonage when you first moved

in there? A. It was around 13,000 or 14,000.

Q. And have you built that up? A. Yes, sir.

Q. Did you build it up the first year? A. It went up every year steadily until I reached 30,000 gallons about two years ago; and I sort of leveled off.

Q. Is Springfield considered part of Metropolitan

Chicago? A. I wouldn't think so.

Q. About how far is it from Chicago? I don't know about that. A. Two hundred miles.

Q. Now, you mentioned that when you took over the station you found all those dead batteries. Did the Texaco people tell you they were dead? A. I knew about it before I bought them.

Q. You knew the condition of the station before you

moved in? A. Yes, sir.

Q. You stated that you could not make a living without (4587) TBA. Have you ever run a station without TBA? A. No, but I know some fellows who tried.

Q. Is that so? But it has never happened to you. A.

No sir.

Q. Hasn't Texaco told you that you have to carry TBA in order to make a living? A. They suggested that I would make a better living.

Q. I think you stated that you buy tires for a customer if he happens to want something other than that you have.

A. Yes, sir.

Q. And I think you stated that you never hide them around the station. A. No. sir.

Q. There wouldn't be any occasion to hide them if you went out to buy one for the customer, put it on, and he then took off with it—drove off, would there? A. I meant that a lot of times I will get them in and it will be a week before he comes in for the tire.

Q. Do you enjoy the credit card privileges, too? A. I sure do.

Q. Do you charge this non-sponsored TBA? A. I haven't, but I don't think I would be above it.

Q. I see. A. Let me clear that up. Now, I have charged other (4588) things on the regular credit card, not the extended credit. I have gone ahead and charged on that, but I have never charged anything on the extended credit.

Q. I was not talking about the extended credit; I mean the usual five- or ten-dollar bill. A. Oh, sure. I put that on the credit card.

Q. Do you chalk it up as a "Goodrich tire" A. No. I just put "tire" on there. It doesn't designate whether it is Goodrich or Firestone.

Q. How about some of these Staab batteries? A. They all go in there.

Q. You indicate that they are Staab batteries? A. No, there is no reason to do that,

Q. You do not mention it that way; it is just a "battery." A. I didn't know you were supposed to do that on the regular credit card.

Q. I think you stated that one of the reasons, or that some of the help that Texas Company gives you is that they do some national advertising. Now, how does that help you individually? A. Well, the more people you get into your station, the better it is. Then it is up to you to sell them. But we get a lot of comments when there is a

big TV show, and people come in. And we have our streamers (4589) and so forth, and give away items that they furnish. It all helps.

Q. But they do not help you in particular to sell Star Batteries, let us say. A. Well, I think they do. Maybe

they don't, but if they get in there, why-

Q. Are you the only Texaco station in Springfield?

A. No; there is about fifteen.

Q. Fifteen others. Are good operators hard to come by in Springfield? A. Yes, sir.

Q. Has that condition existed for any length of time?

A. It has existed for quite some time.

Q. Is there any big industry there that takes up prospective operators? A. Yes. We have Allis-Chalmers and Sangamo Electric. They make meters and sonar equipment.

Q. Now, getting back to to the time that you arst took over the station, you started purchasing from Goodrich,

as I understand it. A. Yes, sir.

Q. Where is the Goodrich supplier? Who is the Goodrich supplier at that point? A. B. F. Goodrich store.

Q. And that is a store! (4590) A. Yes, sir.

Q. Where are they located in relationship to your station? A. At the time I opened they were approximately seventeen blocks away, in the downtown area.

Q. Are these other suppliers closer to your place of

business? A. Yes, sir.

Q. Do any of them patronize your gas station! A. Yes, sir.

Q. Which ones? A. Harwood trades there quite a bit, and Gietel very little—just once or twice a month.

Q. How about the Star Battery people? A. They trade with me once in a while. They do a couple of tanksful a month.

Q. Do you do any repair work for them? A. Staab sends me generator work a lot of times.

Q. What all do you do at your station? A. We do all the generator and ignition work and normal station work. No overhaul work.

Q. No overhaul work? A. No, sir.

Q. How about the Goodrich store? Do they ever give you personal business, such as gas? A. Never have.

(4591) Q. Do you ever buy any batteries and accessories from Goodrich? A. I have occasionally bought. When I am down there for tires or something, if I need a couple of filters, or if I am low on some polish, I will buy some.

Q. Getting back to the time you first moved into your station, did you buy more from Goodrich at the time you moved in, at that time, than you do presently? A. No.

Q. I think you mentioned that you bought some supplies from Firestone. It was a little, apparently. A. Yes, sir.

Q. What is the source of supply there? A. Firestone store.

Q. And where is it located? A. It is about three blocks from Goodrich.

Q. Farther away from there? A. No, sir; a block closer, on an angle. But it is a block closer.

Q. You own no part of that station, is that correct. I

am talking about the property. A. No, sir.

Q. What about the equipment on or in and about the station! A. Well, other than the office furniture, of course the lift, the compressor, and so on, everything in the station—all tools and equipment—are mine.

(4592) Mr. Dias: I think that is all.

#### Redirect examination by Mr. Lorenzen:

- Q. Just a couple of things, Mr. Midden. When you say you went down to the Goodrich store occasionally to get something when you were low, is that what you would call "picking up"? A. What I meant was that if I happened to be low and I was going after some tires, then instead of going around to another place, I would just pick it up there.
- Q. That is what is known in the trade as "Picking it up," is it not? A. Picking it up.
- Q. You were asked whether you were the only Texaco station in Springfield, and I think you said about fifteen others. A. Fifteen others, yes.
- Q. Do you happen to go into the other Texaco stations, those that are located near you? A. Oh, yes.
- Q. What have you noticed with respect to whether or not they have non-sponsored TBA on display? A. Well, the three—

Mr. Dias: I will object to this unless we (4593) get the names and the times he was in there.
Mr. Lorenzen: All right.

#### By Mr. Lorenzen:

- Q. Give us the names. A. Joe Matthys, South Grand and Glenwood, has Gates Hose; Stu Hines, McArthur and Edwards, has Willard Batteries; Carl Weitsl, at Jefferson and Walnut, has Willard Batteries. And I have been in their stations—all of them—within the past month.
  - Q. Are those the ones closest to you? A. Yes, sir. Two of them are just about three blocks away, and the others are about six blocks.
  - Q. Are you acquainted with the other stations? A. Yes. I know, outside of a couple of new operators, about every one in town.

Q. Do you know what they handle in the way of TBA? A. Well, I would hate to commit myself on the rest of them, because I don't get in there as much as these three.

Q. By the way, are you the president of the local deal-

ers' association? A. Vice-president.

Q. And that is the Gasoline Retailers Association? A. It is called the Associated Service Station Dealers.

Q. That includes all service stations, and is not (4594) limited to Texaco. A. Yes, sir.

Mr. Lorenzen: That is all.

#### Recross-examination by Mr. Dias:

- Q. Returning to Mr. Matthys at South Grand and Glenwood, what else does he have in there besides Gates hose?

  A. What else?
- Q. What kind of tires? A. He has Goodrich tires and Goodrich batteries.
- Q. Do you know anything about his filters? A. He has Fram Oil Filters.
- Q. Do you know how long he has been carrying Gates hose? Could you tell us that? A. No, sir.
- Q. And Stu Hines? A. Stu Hines has Firestone tires and Firestone belts and hoses.

Q How about batteries? A. Batteries is Willard.

- Q. And would you tell me again what the filter was?

  A. Stu has Fram, and some Wix.
- Q. And Mr. Weitsl? A. Mr. Weitsl has Firestone; he has Firestone tires and he has some Firestone and some Gates hoses and batteries.
- (4595) Q. How about filters? A. Filters is mostly Fram.
- Q. Do each of these gentlemen have the large advertisement in the form of a sign outside their stations, advertising respectively Goodrich and Firestone? A. Each one has some sort of advertising.

Q. Window valences and that sort of thing? A. You

mean the thing across the top of the window?

Q. Yes. A. Yes, sir. Carl Weitsl has "Firestone" on his. Stu Hines has an old-style station; he doesn't have anything on it. He has the canopy over there, and the windows wouldn't take it.

Q. Does he have the outside sign, then, showing "Fire-

stone?" A. Yes, sir; he has an outside sign.

Q. And Matthys? A. Matthys has a sign.

Q. "Goodrich?" A. Yes, sir.

(4598) H. E. SMILEY was thereupon called as a witness for and on behalf of the Respondent, and being first duly sworn, was examined and testified as follows:

### Direct examination by Mr. Royall:

Q. State your name, please. A: H. E. Smiley.

Q. And your address. A. 1616 South 79th Avenue, Omaha, Nebraska.

Q. Are you engaged in the service station business in

that town? A. Yes.

(4599) Q. Are you a lessee of the Texas Company under the usual form of lease? A. Yes, sir.

Q. How long have you been a dealer in a Texaco sta-

tion? A. Over 25 years.

Q. And how long have you been at your present location? A. About 15½.

Q. What is your monthly gallonage, approximately?

A. Oh, around 25,000.

Q. Now, do you carry a sponsored brand of TBA, that is, one sponsored by the Texas Company? A. I handle a Goodrich product, Goodrich tires, yes.

Q. Who made the selection of that company! A. I did.

Q. What is that? A. I did.

Q. And at the time that you made that selection state whether or not you committed yourself in any way to buy any sponsored goods or any amount of sponsored goods? A. No. sir, I did not.

Q. Did you receive, four or five years ago, a letter like this that I hand you, and I will have to have it identified in a minute; did you ever receive a letter like this that I hand you except for the names and dates.

Mr. Royall: Mark this, please.

(The paper referred to above was marked Respondent's Exhibit 39 for identification.)

A. Yes, sir; I have received those in the past.

#### By Mr. Royall:

Q. You do not have the exact letter which you received, do you, sir? A. No, sir, I do not.

> Mr. Royall: Your Honor, we would like to offer this in evidence except for the dates and names which are not applicable to Mr. Smiley.

> Mr. Dias: Do I understand you received a letter

similar to this, is that the situation?

The Witness: Yes.

Mr. Dias: Do you know when you received them?

The Witness: I received them in the past. o I don't receive them any more because I don't purchase oil in that quantity discount. I buy it in carload lots so that I am not entitled to an extra discount.

#### By Mr. Royall:

- . Q. Did you receive them over several years in this form? A. Yes.
  - Q. Dating back four or five years ago? A. Yes, sir.

(4601) Hearing Examiner Kolb: When was the last date you got that letter, if you recall?

The Witness: I would say it was approximately

four years ago.

Hearing Examiner Kolb: And that is the letter you received, except for the names of the parties on it?

The Witness: Yes; maybe I can explain to your satisfaction a little bit; at the end of each year, or, what (4602) would naturally be the termination of your lease they would send you 6 cents a gallon back for every gallon of oil you purchased, and a cent a pound for each pound of grease you bought. As soon as I started buying in carload lots that didn't apply so I didn't get any more letters but this is the form that they would use to send your check with at the end of the year.

Hearing Examiner Kolb: The objection is overruled. The document is received in evidence as

Respondent's Exhibit 39.

(The paper referred to, heretofore marked for identification Respondent's Exhibit 39, was received in evidence.)

Mr. Royall: Now, your Honor, I would like to call to your attention a very short portion of this letter—

Mr. Dias: The last paragraph.

Mr. Royall: —the last two sentences of the last paragraph: "You are free, as you know, to select any brand of TBA merchandise which you may elect and our only interest is to help you market that merchandise at a profit to you so that your business will be more successful in every way. You are handling high quality petroleum products in there and the

earnings that can be developed through a line of quality TBA merchandise should be very (4603) important to you in the operation of your station."

### By Mr. Royall:

- Q. Now, Mr. Smiley, did you discuss at any time with the Texas Company representatives the matter referred to in that letter, that is, relating to your freedom to purchase any brand you wish; did you discuss that at times? A. Yes, sir.
- Q. When were those discussions? A. Oh, generally when a salesman would call on me.

Q. And were there any discussions at dealers' meetings?

A. Well, not as an individual but as a whole group.

- Q. As a whole group. What, if anything, would the Texas Company say about the matter of your freedom of choice? A. Well, they just told us that they would like to have us promote the sale of TBA merchandise and that they assumed that we would want a major brand.
- Q. Did they recommend Firestone or Goodrich? A. Yes.
- Q. And did they say anything about who should make the choice between them or any other brand? A. They told us that that was our own prerogative.

Q. Did you consider yourself required to buy any particular brand? A. No, sir.

- Q. Now, as between Firestone and Goodrich, you designated (4604) Firestone, did you? A. No, sir,—Goodrich.
- Q. And do you carry some Goodrich products? A. I carry Goodrich tires.
- Q. And are most of your tires Goodrich tires? A. Yes, sir.
- Q. What percent would you estimate? A. Almost 100 percent.

Q. Now, do you carry other Goodrich products? A. No, we have nothing else with the Goodrich name on it.

Q. With the Goodrich name,—but do you carry items sold by the Goodrich distributor; do you carry bulbs, caps, car rugs, cleaners? A. Yes, we buy those from Frost Industries.

Q. Is that a Goodrich affiliate? A. Well, they are a

distributor for Goodrich products.

Q. And do you buy waxes and polishes? A. Some.

Q. And wiper blades? A. Yes, sir.

Q. Do you recall any other products that you buy from Goodrich or from its distributor? A. Not right offhand, I can't, no, sir.

Q. Where do you buy your batteries? (4605) A. We

buy those from Carl Anderson and Kuehn-Baymiller.

Q. None from Goodrich? A. No.

Q. Can you give us the names of—I will ask it in this way: Do you buy your other accessories partly from the Sidles Company, partly from Carl Anderson, partly from Kuehn-Baymiller, partly from Al's Auto Supply, partly from Monskey-Lewis? A. From all except Monskey-Lewis; they have gone out of business.

Q. But from the others you do buy the major part of

your other accessories? A. Yes, sir.

Q. Do you recall any others from whom you buy? A. Well, we buy from Storz Supply, Clark Supply, Hulac-Chevrolet.

Q. What percentage of your TBA business, approximately what percentage consists of accessories as distinguished from tires and batteries? A. About 40 percent.

Q. And what percentage of your total TBA is bat-

teries? A. Probably about 12 to 15 percent.

Q. Does the Texas Company assist you in your TBA program? A. Yes, sir.

(4606) Q. Can you recount some of the things they do to assist you? A. Well, yes, just this last spring there was one instance; they brought out quite a number of folders pertaining to the draining and flushing of radiators, getting winter anti-freeze out of there, and so on; our dealer magazine helps us quite a little bit in our TBA business, also their advertising, — it all tends to help.

Q. Do they assist you in any way in the merchandising of your products? A. Yes, sir; they do that; in the displaying of merchandise, better arrangements; in case they have a suggestion that they think would work out better,

and it suits us, we do it that way.

Q. Do they give you advise and assistance in the matter of your record-keeping? A. Oh, yes.

- Q. Now, is that assistance and any other they may render you furnished to you by the Texas Company on all your TBA, whether sponsored or unsponsored? A. Yes, sir.
- Q. Have those activities been helpful to you in your TBA sales? A. Definitely.

Q. Have they tended to increase those sales? (4607)

A. I would say they have, yes.

Q. And with the increase of your TBA sales what has been the effect on the gasoline sales? A. Well, our gasoline volume has steadily increased. Every month we show an increase over the previous year.

Q. Now, I forgot to ask you a moment ago: Do you buy any spark plugs from Goodrich? A. No, sir.

- Q. Do you buy any battery cables, fan belts, or radiator hose? A. No, sir.
- Q. Now, where are your non-sponsored goods displayed? A. In our office, in our service bays, as well as outside the building, weather permitting.
- Q. Is it displayed in a manner in which it can be easily observed by those entering and coming into the station?

  A. Yes, sir.

Q. Have you ever hidden any merchandise? A. We have no place to hide it. We don't hide it.

Q. Have your Texas salesmen seen your non-sponsored

merchandise ? A. Yes, sir.

- Q. Have they requested you to remove or conceal it? A. No, sir.
  - (4608) Mr. Royall: Will you mark this for identification as Respondent's Exhibit 40?

Q. Mr. Smiley, does that picture correctly depict or show merchandise in your service station? A. Yes, sir.

Q Is that typical and representative? A. Yes, we always display our merchandise that way.

Q. Is that representative of the display you have had over the course of the years? A. Yes, sir.

(4609) The Witness: Those are Goodrich tires.

Mr. Dias: And the tire standing up at the right-hand corner, is that a Goodrich tire?

The Witness: That is a Goodrich tire also.

Mr. Dias: You don't know when it was taken? The Witness: No, sir. I know it was taken but it was taken after we were closed and I don't know who took it or even the approximate date. I didn't find out about it until afterwards.

Mr. Dias: Do you mean this was shot through your window?

The Witness: Yes.

Mr. Dias: The picture was taken through your window?

The Witness: Yes.

(4610) Q. Do you consider and believe, yourself, that you have a right to buy sponsored TBA of any kind you wish to? A. Definitely.

Q. And from any source? A. Yes.

(4611.) Q. And do you act on that belief? A. Yes, sir.

Q. And do you buy the things you want from whom you want? A. Any time I can buy quality merchandise from anyone at a better price, that is where I buy it.

Q. Has anyone ever threatened to change or cancel your lease because of these non-sponsored items you buy? A.

No, sir.

Q. Has the Texas Company ever tried to force you in

any way to buy sponsored items? A. No.

Q. What are your reasons for selecting Goodrich tires? A. Well, primarily I think they are the best but when they came out with this tubeless tire they sold me on their product right there.

Q. Is there any advantage in carrying a tire well-advertised, and with an established customer demand? A. Yes, sir; I couldn't afford to advertise the way Goodrich advertises their tires. That certainly reaches all my customers.

Q. What other leading brands that fall within the category just mentioned are well-advertised and stress the customer demand? A. Well, there is Firestone, Goodyear, possibly U. S.

Q. And Goodrich?, (4612) A. And Goodrich, yes, sir.

Q. What is the advantage of handling the established line of that kind? A. Well, first of all your customer acceptance. That is the biggest advantage, right there. The product is half sold before you try to sell it.

Q. What tire do you believe has the best customer

demand in your area? A. Goodrich.

Q. And what about the Goodrich system of national adjustment, adjustment anywhere? A. That is a very big

item. We make our own adjustments. We don't have to contact the distributor or the company, either one.

- Q. What about the matter of service to customers? A. Service to the customers?
- Q. Yes: (4613) A. Well, we have always maintained that they got better service out of Goodrich tires than any other tire and Customers' Report, in a recent issue, bears us out.
- Q. Are there several independent distributors in the Omaha area? A. For Goodrich, you mean?
  - Q. Of other tires; and TBA, in general? A. Yes.
  - Q. Do you buy from some of them? A. Sure.
- Q. Have you had an opportunity to compare the service rendered by those other distributors and the service rendered by the distributors of Goodrich tires? A. Yes, sir.
- Q. What is your opinion as between those two? A. Well, the service we get from Frost's, as far as our tires are concerned, and any other merchandise we buy from them can't be beat; it is very satisfactory.
- Q. Is there any requirement by Texas, either in its lease or otherwise, for you to put up a Goodrich decal?

  A. No, sir.
- Q. Do you have signs advertising Goodrich? A. We have decals on the windows. Those are the only signs we have.
- Q. Where do they come from? (4614) A. Well, we had to call up Frost's and arrange to have them get them for us.
- Q. And they were furnished to you by Frost, were they? A. Yes, sir.
- Q. Is there a difficulty, sometimes, in getting them? A. Yes, sir.

Q. Now, is there any requirement by Texas in its lease or otherwise, as to the hours during which your service station shall be kept open! A. No, sir.

Q. Who determines that? A. I do.

Q. And on what basis? A. Well, when the business is there, that is when we should be open.

Q. Have you been offered other service stations by lead-

ing oil companies? A. Yes, sir.

Q. Do you know whether or not there are empty Texaco

stations that have no operators? A: Yes, sir.

Q. From your general knowledge of your business, do you know whether or not the oil companies, the large oil companies, have a difficult time in getting good operators for their stations? (4615) A. Yes, sir.

Q. Do they? A. They sure do.

Q. What relation does your TBA operation bear to the profit your station makes? A. Well, without our TBA program we just wouldn't make any money; that is all.

Q. And I think I have already asked you, but I will ask you again: Does the progress of TBA in a station assist in the sales of gasoline? A. Very definitely.

# Cross examination by Mr. Dias:

Q. Mr. Smiley, when did you first know you were going to testify in this case? A. Two or three weeks ago. I think that is about the correct time.

Q. And I think I missed the address that you gave to Mr. Royall. Will you give me the address of your station again? A. Yes; 50th and Underwood.

Q. Is that your only station? (4616) A. Well, it is the only one I operate. I own another service station

Q. Is it a Texaco station also? A. I leased it to the

Texaco Company.

Q. How about this one at 50th and Underwood; do you own that property and lease it to Texaco? A. No, I lease the service station.

Q. From the Texas Company . Yes.

Q. What about the other station; where is that located?

A. 7502 Pacific.

Q. Didn't you operate that at one time, yourself? A. No, I didn't operate it. I helped finance a fellow to operate it.

Q. You never operated that one, yourself; I mean you, were never in that station? A. No.

Q. Wasn't that also known as Smiley's? A. Yes.

Q. Was that station operated concurrently with the one at 50th and Underwood? A. I ran the one at 50th and Underwood.

Q. You have been there in that location for 15 years,

did you say? A. Yes.

(4617) Q. During what period of time was the station at 7502 Pacific operated? Is it still there? A. It is still there.

Q. How long has that station been at that location? A.

About four years.

Q. Did you build a station on it or do you just own the property, which? A. I own the property and built the service station also.

Q. You leased the whole business to the Texas Com-

pany? A. Yes.

Q. And the Texas Company leases it to an operator, is that the situation? A. Yes, sir.

Q. Did you tell us from whom you purchased batteries?

A. Carl Anderson, Kuehn-Baymiller.

Q. And how long have you purchased batteries from Carl Anderson? A. 20 years.

Q. How do you split your purchases between the two; do you buy as much from the one as from the other; that

is, from Carl Anderson as from Kuehn-Baymiller? A. I try to, yes.

Q. Can you give me some idea as to your annual purchase of batteries from Carl Anderson? A. I don't exactly break it down that way.

(4618) Q. Well, can you do it unit-wise? Is there a certain amount— A. No, I buy other things from the Andersons and I don't separate the batteries from the other items I buy from them.

Q. Does Anderson carry one or two different types of batteries? A. One that I know of.

Q. What is that you buy? A. That is Auto-Lite.

Q. And what battery do you purchase from Kuehn-Baymiller? A. Auto-Lite.

Q. Is there any reason why you buy the same battery from two different companies? A. No, only that I am on a preferred distributor buying program with Electric Auto-Lite Company and I can purchase from any distributor they have at that price.

Q. You say you are on a preferred list, are you? A. Yes, sir.

Q. Will you explain that a little bit for us? A. Well, if you buy in large enough quantities you have a better-buying price that way and I generally buy my batteries 100 at a time.

Q. And you get this preferred price directly from Auto-Lite, is that it, through Anderson. (4619) A. I get the price direct from Anderson but I understand they are rebated for that type of sale.

Q. In addition to the property at 7502 Pacific you have some other property, do you not; don't you have some property at 4918 Underwood? A. Yes.

Q. And don't you have a garage on that property? A.

Q. And you operate that garage in conjunction with your service station? A. No.

Q. You do not? A. I operate that under a corporation.

Q. But I mean you are primarily connected with the garage? A. I run them both but I don't operate them together.

Q. I understand that, but you do repair work in the

garage, do you! A. Yes, sir.

Q. And can you tell us what these batteries and other items that you purchase through your station, are they used in your garage in any way? A. No, sir.

Q. You purchase separately for your garage purposes?

A. That is right.

Q. What other items do you purchase from Anderson? (4620) A. Oh, we buy shock absorbers, fuel bulbs, ignition parts, sparkplugs, battery cables.

Q. And from Kuehn-Baymiller? A. Approximately the same type of things, mufflers also. That is, from Kuehn-

Baymiller.

Q. Would it be fair to say that most of your purchases from Anderson and Kuchn-Baymiller aside from these batteries are in the hard parts, the repair items? A. No, we get sparkplugs, mufflers, tail pipes—all of those are quite important items.

Q. They are mostly repair items, aren't they, except the plugs? A. No, I think mufflers are classed as accessory items. I know Firestone handles those in their line. That

is pretty much an every-day item.

Q. I wouldn't be interested except insofar as it might be another service station. I think you said you purchased from Storz; do you purchase from them regularly? A. Yes.

(4621) Q. Do you have a regular open account there?

Q. What do you purchase from Storz? (4622) A. Oh, thermostats, fuel pumps, radiator hose.

- Q. Then you've been purchasing continuously? A. Well, there was a period there, for a while, that we didn't have a salesman calling on us. I don't know the reason for that, but there was a period there when we didn't buy from them.
- Q. Quite a long period, wasn't it—1953 on? A. I can't tell you exactly. I know the last year and a half I bought quite a bit.
- Q. You started purchasing within the last year, year, and a half? A. Yes.
- Q. And can you give us some idea of your volume with Anderson? A. Well, I'd say it's probably in the neighborhood of around—between \$5,000.00 and \$6,000.00.
  - Q. \$5,000.00 and \$6,000.00? A. Yes.
  - Q. Do you have an open account there? A. Yes.
- Q. Is it just pickup business? A. No. We don't make any pickups.
  - Q. Never make any pickups at Anderson? A. No, sir.
- Q. If I suggested the figure of \$580.00 during 1956, would (4623) you say that was inaccurate? A. Yes, I believe I would.
- Q. And about \$1,300.00 during 1957 with Anderson?

  A. I'm quite sure that's wrong.
- Q. Is there any way you could check those figures? A. Sure, I could, on my income tax return. Wait a minute now. There was one year when we were closed—I'll take that back—we were closed for about six months that one year, '56 I believe it was. I think that's right.
- (4624) Q. And then you claim that you—your station then was completed—incidentally, what was it closed for, do you recall? A. Rebuilding.
  - Q. I see. Completely rehabilitated, was it? A. Yes.

- (4625) Q. Do you know offhand what type of TBA is handled in that 7500 Pacific Street Station of yours—or, the one leased from Texaco? A. I believe he handles Goodrich.
- (4626) Q. And I think you stated that you made some purchases from Sidles. Can you tell us in a general way what it was that you—or, what you have been purchasing from Sidles? A. Oh, mufflers, tail pipes, some shock absorbers, floor mats.
- Q. Station supplies, equipment, did you buy some of that? A. Yes, I have.
- Q. And can you give us some idea of what your purchases from Sidles amounted to in 1957? A. It was very small. I can't tell you exactly. I think it was in the neighborhood of two or three hundred dollars.
- Q. Now, are you talking about TBA items as we commonly talk of them, that is, tires, batteries, spark plugs, filters, fan belts, hose, chemicals, wiper blades, and that sort of thing? A. Yes.
- Q. How about hard parts, or repair parts, such as mufflers, tail pipes, station supplies, equipment, that sort of thing? A. Well, I generally don't buy anything more from them than—well, something I can't get somewhere else. Sidles's (4627) service department is very poor.
- Q. If I suggested to you that your purchases of these mufflers and pipes and hard parts, station supplies, and equipment during 1957 amounted to \$800.00, would that sound exorbitant to you! A. That's more than I thought, if it's so.
- Q. And correspondingly your purchases of radiator hose or fan belts amounted to \$3.06, and chemicals, \$10.80, wiper blades, \$4.50. Does that sound closer to— A. Could possibly be.

Q. Do you think the figures on these parts, these hard parts, are inaccurate, do you—that it would not run up to \$780.00, \$790.001 A. Well, it's pretty hard to say without my checking my records on that to refresh my memory, but I didn't think I bought that much from Sidles.

Q. Have you been dealing with Sidles for any length

of time? A. Yes, sir,

Q. Has your pattern of purchasing been more or less consistent with Sidles! That is, have you been buying roughly the same type thing from Sidles all along! A. Pretty much, yes.

Q. Do you think you might remember your 1954 pur-

chases from that company? A. I'm sure I wouldn't.

(4628) Q. Do you know whether or not your purchases were more or less than at that time? A. I think they were a little bit more. The main reason for that is they've recently built a new building and they're rather disorganized. I don't know why. But our service and deliveries from them has been very unsatisfactory.

Q. Are they located farther away from your store than the Frost Industries, for example? A. No, sir. They're

closer than Frost.

(4629) Q. Are you a distribution point for any of the TBA items? A. No, sir.

Q. You stated that the percentage of accessories of your TBA—let me put it this way, 40% of your sales of TBA consist of accessories, is that correct? A. Yes.

Q. What do you classify as accessories? A. Well, fan belts, radiator hose, battery cables, shock absorbers, bulbs, floor mats, cool cushions, mufflers.

(4630) Q. Any pipes? A. Tail pipes? Yes, sir.

Q. Well- A. Oil filters.

Q. Oil filters! A. And air filters.

Q. Is that about it? A. I would say so. Did I mention spark plugs?

Q. No, I don't believe you cid. A. They should be in

there also.

Q. All right. Now, what is your dollar volume of sales, so that we can figure out what this 40% amounts to. In other words, 40% of what? What dollar volume? A. Well, of our—do you mean our total yearly volume? Is that it?

Q. Well, I don't know. You said the figure of 40% of your TBA sales amounted to—I mean of accessories. Now,

40% of what figure? A. Of our gross business.

Q. Of your gross business on TBA in general? Tires,

batteries- A. Tires, batteries and accessories, yes.

Q. Can you give us some idea of what your gross business is in TBA? Take 1957. A. Well, I would say it would amount to around \$35,000.00.

(4631) Q. All right, sir. Then 40% of the \$35,000.00 would consist of these accessories which you named. What part of that percentage would be attributable to shock absorbers, and tail pipes, mufflers—do you have any idea? Are they a big item in your station? A. Shock absorbers are quite a large item.

Q. And how about mufflers and tail pipes? A. Mufflers and tail pipes? Well, our dollar volume on that is not too

large because they're not too expensive an item.

Q. How about your shock absorbers? They are an expensive item, are they? A. Well, yes. We sell shock absorbbers for around \$35.00.

Q. And can you give us some idea of how many of those you install in a year's time, taking 1957 as an example?

(4633) Q. Can you give us some idea of your current inventory in your station, tires, batteries, and accessories? A. In dollar volume I would be a little hesitant on that, but I would say it would run in the neighborhood of around \$6,000.00.

Q. How much of that is represented by tires? (4634)
A. Probably about—maybe \$4,000.00.

Q. And is that your regular inventory, your normal tire inventory? A. Yes, sir,

Q. And those are Goodrich tires, are they not? At Yes, sir.

Q. You mentioned that Texaco assists you in your TBA program, and you mentioned the Dealer Magazine. Is that

a magazine published by Texaco? A. Yes, sir.

Q. And you also mentioned that they assist you in your record keeping. Can you tell us what that entails? A. Well, the biggest thing they have, and one of the best they have, is a follow-up system that is given to us, a lot of us in the past having used it—which is very effective. Any work that has been done on a customer's car, you have a complete record of it. There are various phases in there, different headings, for all types of work—far more than what some of the stations do. And we keep that record up to date. We know just exactly what's been done to a customer's car, what service is coming up, what doesn't need to be performed. It's very complete.

Q. Well, is that a system that they show to you and then you yourself keep it up, or do they keep it up for you? A. No. We used to keep it up. We got to be quite large. (4635) Now we have a man that comes in and keeps it up

for us, gets all the follow-up cards and everything.

Q. Is that a Texaco representative, the man that comes in? A. No. But the Texas Company furnishes all of the

follow-up cards. There's probably two or three dozen different types.

Q. And is that the only type of record keeping you were referring to? A. Well, as far as the Texas Company helping us with—

Q. Yes. A. As far as l-other than our volume sales and

unit sales, as far as lubrication and oil sales.

Q. TBA, do they keep track of that? A. Yes.

- Q. This Respondent's Exhibit 40, this picture that was taken through your window, how long have those items been in that same position? I mean, have you changed your station about in any way? A. Oh, we change our display around periodically, but we never change the battery display other than different types of batteries, so that they will look different.
- Q. Well, then, does Respondent's Exhibit 40 depict the condition of your station and your stock as it was for a period of time? A. Yes, sir.

Q. It hasn't just been rearranged or anything of that. sort? A. No, sir.

(4636) Q. Do you have a Goodrich sign outside your a station? A. No, sir.

? That is, one of those oval signs? A. No, sir.

Q. You do not? A. No.

Q. Now, do you have one of those annual leases with Texaco Company? A. Yes, sir.

Q. And is it the same—it's the lease that you signed when you first went in and it's renewed each year, is that right? A. Yes.

Q. Have you ever bought tires from Sidles or any of those other distributors in Omaha? A. Yes, I've bought some tires from Sidles. I've bought some from Firestone, and I've bought some from Goodyear. I bought some from U.S.

#### H. E. Smiley, for Respondents-Redirect

Q. Now, in selling those tires and in selling these other TBA items, have you ever sold those on credit? A. Yes, sir.

Q. And have you charged them—charged those items

on the Texaco credit card? A. Yes, sir.

- Q. And have you indicated on the credit slips that they were other than Goodrich items? (4637) A. I generally don't even name the type I sell. I just put down the size, and—
- Q. Tire, whatever it may be, without mentioning names?
  A. That's right
- Q. I take it that the station operator situation in Omaha is pretty bad. You said that there are empty Texaco stations? A. Yes.

Q. And operators are hard to find? A. Yes, sir.

Q. Can you tell us how long that situation has existed?

A. Well, it's existed for several years, because the ads in local newspapers—there's always ads there for service station operators.

#### (4639) Redirect examination by Mr. Royall:

Q. Mr. Dias read you a long list of items that were bought from Anderson, Baymiller, Sidles and Storz. None of the items of that character that he mentioned were bought from Goodrich, were they? A. No, sir.

Q. The—did the Texas Company ever criticize you or threaten you for the purchase of those items that Mr. Dias

read to you! A. No, sir.

Q. In addition to those he asked you about, did you buy

Gates fan belts from Baymiller! A. Yes, sir.

Q. He asked you about certain items under accessories, coming within the word accessories. Did you undertake to give him every minute item in that list? (4640) A. No, sir.

# H. E. Smiley, for Respondents—Recross William V. Brooks, for Respondents—Direct

· Q. Is thermostats, waxes, polishes, and wiper blades,

for example, part of accessories? A. Yes, sir.

Q. Are the amount of inventory on hand at any particular time and the amount of sales, of specific items during a year necessarily in the same proportion? A. No, not necessarily.

Q. I see. These records suggested to you by Texas Company and part of the forms furnished to you by Texas Company, were they available and used for non-sponsored TBA

as well as other TBA? A. Yes, sir.

# Recross examination by Mr. Dias:

- Q. Mr. Royall mentioned thermostats, waxes, polishes and these other accessories. Is it my understanding that you buy nothing from Frost except tires? Is that all you buy from Frost? A. No, no. I buy some waxes, gasoline cans, some floor mats.
  - Q. How about fan belts, hose? A. No.

Q. None of those? (4641) A. No.

Q. Oil filters? A. Yes, I buy some filters from them, and I also buy batteries I had from them.

Q. You buy no batteries from Frost? A. No, sir.

(4642) WILLIAM V. BROOKS was thereupon called as a witness for the Respondents and, having been first duly sworn, testified as follows:

# Direct examination by Mr. Lorenzen:

Q. Mr. Brooks, did you give your full name to the stenographer? A. Yes, I did.

- Q. And did you tell him where you lived? A. No, I didn't.
  - Q. Would you! A. 1402 Hancock, Bellevue, Nebraska.
- Q. What is your occupation? A. I run a service station and garage business.
  - Q. What type of gasoline do you sell? A. I sell Skelly.
- Q. And this particular station or garage, is it owned by you? A. I own the premises, yes.
- Q. When did you become a Skelly dealer? A. I acquired that business in September of 1955.
- Q. And did you—when did you begin operating it? A. September 1955.
- Q. Before that time did you have any connection with the Texas Company! A. Yes, sir.
- (4643) Q. And what was that connection? A. I leased a Texaco service station at 13th and Harrison in Omaha, from July of 1950 through most of December of '55, an overlap there.
- Q. Where was that located? A. 13th and Harrison, Omaha.
- Q. And did you have an interest in another Texaco station also? A. I also had another Texaco station at—right across the street from the premises I now own, at Mission and Fort Crooks in Bellevue.
- Q. And that—you had that interest from December '55 to September '56? A. No, sir, I had that from about March of '55 until September of '56. I had all three of them for a while.
- (4644) Q. Before that—before 1950, did you have any connection with Firestone? A. I was an employee of Firestone Tire and Rubber Company.
- Q. Were you a salesman? A. I was a salesman and store manager at various times.

Q. In those capacities did you sell Firestone products to gasoline sub-stations? A. I did.

Q. Including some stations that sold Texaco gasoline?

A. Yes.

Q. Did you have to sell the Texaco stations the Firestone products or were they delivered to you? A. I had to sell them the same as the rest of my customers.

Q. Did you find that the Texas employees were helpful to you in any way in connection with your selling Firestone TBA to the stations? A. Yes, sir, they were helpful.

Q. But who did the selling? A. I had to sell them.

Q. And you yourself did the selling to the Texaco stations? A. Yes, sir.

- Q. Now, by the way, when you are endeavoring to sell a service station, or were trying to sell them, Firestone TBA, and you found they were handling some other line of TBA, could you (4645) accomplish that change over by making one call on them? A. No, sir.
- Q. Did you ever accomplish it by making nothing more than a telephone call? A. No. sir.
- Q. How many calls would you say it would take for you to win over a service station account to your line where he is handling something else?

(4646) The Witness: Well, many times eight or ten, and many times as many as I wanted to call. I'd never do more than split his business, get a portion of it.

#### By Mr. Lorenzen:

Q. Now, by the way, was one of the accounts to whom you sold the account of a Texaco dealer by the name of Zaloudeck? A. Yes, sir.

- Q. Where was his station located? A. It would be at 13th and Deer Park in Omaha.
  - Q. And is-what's his full name? A. Jim.
- Q. It's Jim, but I want to get his—your Honor, do you have a record of that witness? I'd like to just be sure it's the same man, James Zaloudeck in Omaha.

Hearing Examiner Kolb: James L. Zaloudeck, I guess, yes.

#### By Mr. Lorenzen:

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- Q. Is that the James L. Zaloudeck? A. I believe that is right.
- Q. And he was a Texaco dealer in Omaha at one time?

  A. Yes, sir.
- Q. Then do you know—he stopped being a Texaco dealer and for a while he was a Mobile dealer? A. Yes, sir.
  - Q. That's the same man? (4647) A. That's right.
- Q. During what years were you his salesman? A. I called on him from the fall of 1949 until the middle of summer of 1950, when I went to—went into business for myself.
- Q. During that time did you ever hear any Texas Company employees threaten him with reference to his TBA purchases? A. No, sir.
- Q. There was some testimony by him, the date is not clearly fixed, it appears about pages 1241 to 1244, and the final upshot of it is that while he handled Auto-Lite batteries, he is supposed to have told this witness that he was going to have to stop handling those and display Firestone batteries because the Firestone representative had told him that that's what he had to do. Now, I want to know whether during the time you were his Firestone representative, you ever told him anything like that! A. No, sir. Jim and I were very good friends. He handled my products when I was on the territory.

Q. And you never made any threat to him of any kind? A. No, sir. He serviced my cars too, two of them, and that —I mean, we had a mutual arrangement.

Q. By mutual arrangement you mean he serviced your cars and in exchange he bought your products? A. Right.

(4648) Q. And that was the Firestone line? A. Right.

Q. Now, when you decided to go into business yourself, you mean you took a lease on this Texas station in Omaha? A. Yes, sir.

Q. Now, at that time had you reached any conclusion about the TBA you were going to handle? A. Well, I took the Texaco station as an outlet for TBA. That was basically why I went into business, for TBA, rather than gasoline.

Q. And what TBA were you going to handle? A. Firestone.

Q. That was the TBA which you had been selling? A. Yes, sir.

Q. Do you know whether at the time you obtained this lease you were acquainted with the Texas Company's TBA policy and the program? A. I feel that I was acquainted with it, yes, sir.

Q. You knew they recommended Firestone and Goodrich to their dealers? A. Yes, sir. At that time Firestone, alone, I believe. I don't believe Goodrich at that time.

Q. Well, that's because there was no Goodrich supply point, was there! (4649) A. No, there was not.

Q. At that time neither Goodrich—the nearest Goodrich supplier was several hundred miles away, down in Kansas City, is that right? A. I am not aware about that. At least it wasn't in my mind to handle Goodrich.

Q. The Goodrich supply has come in since. A. Yes.

Q. That was not in existence at the time. A. Not as a Goodrich supply point.

Q. Did you also know whether or not the Texas dealers could buy TBA from any other place they wanted to? A. Will you restate the question, please?

Q. You said you knew the policy of the Texas Company. It was to recommend Firestone, in your case. A. Yes, sir.

Q. And I wanted to know whether you knew anything about the Texas Company's policy about buying from other sources than Firestone. A. Well, I ran against that while I was selling, yes.

Q. You knew that the Texas Company dealers could buy from any place? A. Yes, sir. There is a dealer present -Mr. Smiley-whose business I could never get, except

split.

Q. Did you try to get it? (4650) A. Yes.

Q. But you did not succeed. A. I split it. With U.S.

Q. He handled U. S. Tires! A. At that time.

Q. And you only succeeded in selling a part of your line, is that right? A. That's right.

Q. Were any threats ever made, as far as you know, against Mr. Smiley by any Texas Company people to get him to buy your products instead of U. S.! A. No, sir. He and I became good friends, and that is why I sold him.

Q. Then you did start in your station handling the Fire-

stone line, is that right? A. Yes, sir.

Q. Did you buy TBA from any other source! A. Well, yes. I suppose I bought from some other sources. A very small amount.

Q. You were a Firestone dealer! A. Basically I was a Firestone dealer, went into business to handle Firestone. There wasn't any reason for me to handle from any other sources unless there was some time—unless there was something I couldn't immediately get from Firestone.

(4651) Q. You bought some things from United Auto! A. Those were usually chrome items I couldn't buy from Firestene, or I could usually get a better dollar and cents

buy.

Q. Where you could get a better dollar and cent buy you bought from them. A. Yes, sir.

Q. Those items included spark plugs, did they not? A.

No spark plugs from United Auto.

Q. How about waxes and polishes? A. Yes, sir.

Q. Cleaners? A. Yes, sir.

Q. Did you buy anything from Sidles? A. I didn't buy anything from Sidles until they had a change in salesmen; then I bought substantially from them. Not in TBA socalled, but in parts, ignitions, brakes that sort of thing.

Q. Didn't you buy Gates! A. I did buy Gates hose from

Sidles.

- Q. Didn't you buy all your radiator hose? A. All of my radiator and fan belts from Sidles.
- Q. Those were plainly marked with a Gates label, were they not? A. Yes, sir.

(4652) Q. And displayed by you? A. Yes, sir.

Q. You made no effort to hide them. A. No, sir.

Q. Did anyone ever, from Texas Company, tell you to hide those? A. No, sir.

Q. Hide any non-sponsored items of TBA? A. No, sir.

Q. Did they ever tell you the Texas Company would be better to you if you handled all sponsored items? A. No, sir.

Q. Now, you also bought seat covers, did you not, from

the Omaha Custom Cover Company! A. Yes, sir.

Q. And that is 100 per cent. A. Yes, sir.

Q. But none of those from the Firestone line. A. No, sir.

Q. Did you buy anything from the Auto Electric Company? A. I bought from them for a while, and then they had a change of salesmen and I dropped them; and later, in 1955, when I opened up my own garage, I now buy from them quite substantially in ignitions and plugs and that type of thing.

- Q. How about Wynn's additive? (4653) A. I buy from the—I buy that from the Remde Distributing Company in Omaha.
- Q. You bought that from the same company while you had the Texaco station did you not? A. Yes, sir; that is the only supply point on that.

Q. And you displayed that additive, did you not? A. Yes, I did.

Q. Was it your understanding that you could buy it, the TBA, from any source you wanted to buy from? A. It was.

Q. While you were a Texaco dealer? A. It was.

Q. Did you, in choosing the TBA you bought, choose the line which you thought would be most profitable to you? A. Yes, sir. That is why I selected it.

Q. That was the basis for your selection. A. Yes, sir.

Q. Did any pressure or any threat by the Texas Company have anything to do with your selection? A. No, sir.

- Q. What do you find with respect to the customers' demand for tires with reference to whether they ask for a particular trade name or want a well-known trade mark tire or something else! (4654) A. I feel by far that most of your sales will be to a well-known brand, such as the one I handle—Firestone.
- Q. Do you agree with Mr. Smiley that the Goodrich tires are the best tires in the business? A. I believe I will have to disagree with him.
- Q. Do you think that your choice of Firestone makes for the best tires? A. Yes, sir.

Q. The ones most easily salable! A. Yes, sir.

Q. And that is why you handled them. A. Yes, sir.

Q. And you continued to handle Firestone since you went with Skelly, did you not? A. Yes, sir.

Q. In addition to you handle a few Hood tires? A. A few Hood tires.

Q. Will you tell us why you handle those? A. Well, some of my Skelly customers, when I moved into that building, do prefer Hood. For them I do handle them.

Q. How about batteries? Do you find that customers ask for batteries by trade name, the same way they do for

tires? A. No, sir.

(4655) Q. How do you sell batteries? A. In other words, a customer comes in and we check his car and find he needs a battery; we put in a battery—period.

Q. And he accepts your judgment on that. A. Yes, sir.

Q. Now, how about when you started in to sell batteries; did you stock some wet charge batteries? A. Firestone Wet Charge, yes, sir.

Q. There came a time when Firestone came to dry

charge, did they not? A. Yes, sir.

Q. After that you did stock nothing but dry charge. A.

Nothing but dry charge.

Q. Did you find that was more satisfactory from your viewpoint? A. I could carry more dollar stock with less inventory tied up.

Q. No suggestion was ever made to you that you are

supposed to hide any TBA. A. No, sir.

Q. That was not on the sponsored list—anything of that kind. A. No, sir.

Q. While you were a Texaco dealer, did you find that the Texas Company gave you any assistance in merchandising (4656) TBA? A. I felt they gave me a lot of assist-

ance in merchandising, yes.

Q. What type of assistance? A. Through sales meetings, through the help of their company display man that used to come around, who would set up my counters for me if I so desired, or re-arrange them into more attractive displays. Through my banners, or through their banners, I mean, that they send out in their display cartons which say "Drain your Anti-Freeze now and put in Anti-Rust" and that type of thing.

Q. Do you or did you find and do you now find that TBA is necessary to your service station business? A. To my business it is very necessary. As I said, that is why I went into business, to handle TBA.

Q. Do you find you make a profit on your own TBA

sales? A. Yes, sir.

Q. Does it also attract customers for your gasoline sales? A. Yes, sir; it does add. I think, likewise, gasoline attracts customers for my TBA.

Q. You did buy from Carl Anderson and Company while you were a Texaco dealer, did you not? A. Very little, as I

recall.

Q. Did you buy from a salesman by the name of Garvey! (4657) A. I did buy from Bob Garvey while he was on territory. His wife happened to be a friend of mine.

Q. He was an Anderson Company salesman? A. He was

an Anderson Company salesman, yes.

Q. Did you continue buying from Anderson when you obtained your own station? A. I don't recall. I buy but very little from them, and I may have been buying from them a short while after I opened my own station while Garvey was still on territory. I don't recall if he left prior to my buying my own station or not.

Q. Since Garvey has left, do you buy anything from Garvey? A. Very little. His wife was a Firestone em-

ployee. That is how I come to know Garvey.

Q. Then is the Anderson Company in the TBA business the same way as the Firestone Company! A. No. I would say that their lines are very nearly all different. Anderson handles more ignition, brakes, and repair parts; while Firestone handles more the accessory line. There may be a few items that do conflict.

#### William V. Brooks, for Respondents-Cross

#### (4658) Cross examination by Mr. Dias:

Q. Mr. Brooks, what items did you buy from Carl Anderson? Weren't they in the ignition line and that type of thing? A. Very probably. I just don't recall exactly. I have a shop man that does most of that buying for me.

Q. You mentioned, too, that at the time you were selling Firestone there was no Goodrich supply point in all of Omaha. Is that right? A. I don't know. At least I didn't feel that Goodrich was any competition to me in my sale of tires. Not as much as U. S. and some of the other rubber companies.

Q. Could you place the time that that situation existed, that Goodrich was not a factor in the Omaha market! A. Well, I was on territory for Firestone from the Fall of 1949 into—excuse me; that is the Fall of 1948 through the middle of the Summer, until I opened my own station in July 1950.

Q. I see. What is the Firestone supply point in your area? Bellview, for example? A. Well, I am a district dealer. I buy out of Kansas City and out of the district warehouse. There is a Firestone at 20th and Harning.

Q. The Firestone store at 20th and Harning is the (4659) primary supply point, is that correct? A. What do you mean by "primary"?

Q. For the Texaco stations that buy Firestone products. Normally they get their products from that Firestone store, is that right? A. I would say probably most of them do. I am not aware, though. I know the ones I called on I did not call on from the Firestone store. I called on the larger ones through the district office.

Q. You were employed by the district office, rather than the store, is that it? A. Yes.

Q. I see. Now, are you a distributor for Firestone? Is that the situation? A. Well, I don't know if I am a distribu-

# William V. Brooks, for Respondents-Cross

tor. At one time I had three stations of my own. In other words, the two leased stations, plus my own. And I had a couple of other small dealers that did buy some from me.

Q. While you had those three stations, where did you get your Firestone supplies? A. My tires from the Omaha District Office; and my accessories and batteries from the Kansas City warehouse.

Q. In other words, you bought direct rather than through the Firestone store. (4660) A. Yes, sir.

Q. And you say you handled some of the others—you were a supply point for some of the Texaco stations, is that correct? A. No, sir; other than the two I leased.

Q. Yes. A. No other Texaco stations.

Q. But other type stations. A. Small stations that bought two or three tires at a time. I would be able to deliver them some tires.

Q. Where were your purchases delivered? Were they delivered to your Texaco in Bellview? A. The Texaco in Bellview, yes.

Q. Did you, in turn, then furnish the supplies duly needed at the Skelly station across the road and the one in Omaha at 13th and Harrison? A. Yes, sir.

Q. Did you also handle appliances there at the Bellview station, the Bellview Texaco station? A. They were purchased through the Bellview Texaco. However, my store was across the street at the Skelly. It is a large building.

Q. But the purchases were made through Bellview Texaco, is that right? A. Since that is where my contract with Firestone already existed.

(4661) Q. And those appliances were Firestone appliances, is that correct? A. Yes, sir.

Q. Did you sell those appliances on Texaco credit cards?

A. I never sold any appliances on credit cards. I never had it come up.

Q. I see. All right. Can you tell us why you discontinued your Texaco station? A. Yes, sir. I wanted to have a bigger building. And, as I said before, I previously went in business to merchandise TBA rather than gasoline, and I was becoming financially able to move into a bigger building, and had the opportunity to buy this one.

Q. Was your concentration on TBA—did it reach a point where your gasoline sales dropped some? A. No, sir.

My gasoline sales kept building.

(4662) CECIL BAIRD was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

#### (4663) Direct examination by Mr. Royall:

Q. What is your name? A. Cecil Baird.

Q. What is the address and location of your service station? A. The address is 2934 West Broadway, Council Bluffs, Iowa.

Q. You are a lessee under the usual form of Texas

Company lease? A. Yes. Third party.

Q. How long have you been a lessee? A. A little over seven years.

Q. What is your monthly gallonage? A. Approximately

18,000 gallons a month.

Q. Now, what brand of sponsored goods do you handle?

A. Firestone.

Q. When did you first start to handle Firestone goods? At the time your station opened? A. I started in the beginning with Firestone.

Q. Did you have any conversation with Texas Company at that time about the recommendation they made! A. Not that I recall, no, sir,

Q. Who selected the Firestone line? A. Well, it was my selection on the recommendation of (4664) a friend of mine, who was in the business. He had been very successful with Firestone and I knew nothing about merchandise, and I went right along with his counsel and advice.

Q. Did you commit yourself in any way then, or later, to buy any particular amount or buy any sponsored goods from Firestone? A. What was the first part of that?

Q. Did you agree with the Texas Company to buy spensored goods? A. No. sir.

Q. From Firestone? A. No, sir.

Q. Did you consider yourself an independent and free agent in the purchase of TBA wherever you wanted to purchase it. Do you so consider yourself? A. I certainly do.

Q. Has Texas Company in any way sought to force you

to bny TBA from Firestone? A. No.

Q. Or from anyone else? A. No.

Q. Did you display your merchandise, both sponsored and unsponsored, in your station? A. Yes.

(4665) Q. Did you conceal any of it? A. No, sir.

Q. From whom did you or from whom do you now buy your batteries and tires? A. I now buy batteries and tires exclusively from Firestone Tire and Rubber Company.

Q. Do you buy anything from the Sidles Company? A.

Yes, sir.

- Q. Does that include about half of your caps and about half of your radiator hose? A. At one time yes; at the present time it includes most of them.
- Q. Most of them. Does it include about half of your thermostate? A. Yes.
- Q. Do you also buy from Sidles Company anti-freeze, filters, spark plugs, and wiper blades? A. Yes, in some quantities.
- Q. Some quantities; that's right. Now, do you also buy from the Council Bluffs Auto Parts Company? A. Yes, sir.

Q. Do you buy about half of your caps from them? A. Yes. No, not caps. I don't believe so.

Q. Did you buy—? A. I did at one time, yes.

Q. And I believe you said you changed. (4666) A. Yes.

Mr. Dias: What is a cap?

The Witness: Pressure radiator caps.

#### By Mr. Royall;

Q. Any seat covers you buy you buy from them, do you? A. That's right.

Q. And do you buy about half of your thermostats or

did you buy about half of your thermostats? A. Yes.

Q. Now, these items that I have just mentioned—excuse me; strike that. Do you also buy from the Council Bluffs Auto Parts anti-freeze, some of your spark plugs, and some of your wiper blades? A. Yes.

Q. From whom do you buy your mufflers and tailpipes?

A. Mostly all together from Sidles Company.

Q. Do you buy anything from Storz? A. Sometimes.

Q. Some accessories? A. Yes.

Q. Do you buy from Paxton and Gallagher? A. Yes.

Q. Do you buy from them a part of your bulbs? A. Yes. A considerable amount of them.

Q. Nearly a hundred percent, right? (4667) A. Nearly so.

Q. And you buy about half of your car rugs from them,

do you not? A. Yes.

Q. And you buy eighty per cent of your fan belts from them, or approximately that amount. A. No. I do on radiator hose, but not fan belts.

Q. That's right. Now, on cleaners, do you buy cleaners

from them? A. In the supply line, yes.

Q. And you buy also some spark plugs from them, do you not? A. Yes.

- Q. Do you buy accessories from Ballinger Automotive Service? A. Yes.
- Q. And does that include a number of products? A. Yes, it does.
- Q. Do you buy about half of your spark plugs from the United Auto Supply Company? A. It is a higher percentage than that now.

Q. What would it be? A. It would be about ninety per cent.

Q. And your waxes and polishes? A. Most of that is

from the United Auto Supply.

- (4668) Q. You buy some accessories from the Dutch Mill Distributing Company and the Warren Douglas Chemical Company and the Bardahl Oil Company? A. Yes.
- Q. Now, none of those companies I mentioned sell Firestone products, do they? A. Not to my knowledge.
- Q. Yes, sir. And the products you buy from them are not Firestone products. A. No.
- Q. What part of your total TBA is in accessories such as I have asked you about? A. Approximately two-thirds.
- Q. I believe you stated you displayed that TBA, sir. A. Yes.
  - Q. And you keep it where it can be seen! A. Yes.
- Q. Has Texas Company or any Texas Company official or salesman ever told you not to display it or to conceal it?

  A. No, never have.
- Q. Now, some items, small items, are also, whether sponsored or unsponsored, are sometimes or usually stored indoors, are they not? A. That's right.
- Q. That is something that applies to filters, sir, is (4669) it not? A. Yes.
- Q. And sometimes to spark plugs—no; perhaps not. A. Maybe I misunderstand when you say "indoors."
- Q. I mean not put on your shelves. A. Filters are always on display. Spark plugs are under lock.

Q. Yes, that is what my question had reference to: under lock. Now, has any salesman ever threatened you about a cancellation of your lease because of your large purchases of accessories? A. No, sir.

Q. Has any salesman or official of or any representative of the Texas Company ever told you you must pur-

chase TBA as they direct or request? A. No, sir.

Q. Now, does the Texas Company assist you in any way in your TBA sales and promotion? A. Yes, they do,

directly and they do it indirectly too.

Q. What do they do directly? A. Well, they have helped many times on displaying of merchandise and in suggesting of outdoor displays. They have gone with me as a representative, door to door solicitation. They have worked on the drive with me (4670) from time to time, helping sell the customer add-on items when they buy gasoline at the pumps. They helped through their dealer meetings, as well as through their publications, through their window advertising, the spots and streamers, and their weatherproof banners.

Q. Have all those matters helped you in your TBA

sales? A. Yes, it certainly has.

Q. Have they advised you as to methods of merchandising? A. Yes, they advise quite frequently.

Q. And do they render that service, both for sponsored

and for unsponsored goods? A. Yes.

Q. I believe you gave an explanation of why you selected Firestone. Do you still prefer Firestone to any other of the brands? I am talking about tires. A. In their rubber line I do.

Q. As to Firestone tires, do you? A. Yes.

Q. Are you familiar with their service, the service that they render? A. Yes.

Q. Is that satisfactory to you? A. Yes.

#### Cecil Baird, for Respondents-Cross

Q. Do you consider that service better than the service rendered by other brands? (4671) A. No, I don't think

I could say that.

Q. All right, sir. Now, is there any restriction imposed on you by lease or otherwise on the hours that you must keep your station open? Are you limited? A. No, there is no restrictions of any kind. It is suggested that I be entirely competitive. Of course, my hours are my own selection.

Q. Now, has your TBA increased? A. Yes.

Q. And has your gasoline sales increased? A. Well, considerably, yes.

#### Cross-examination by Mr. Dias:

Q. What is your source of supply of Firestone products? A. The Firestone district.

Q. District store or warehouse? A. That is the warehouse. The Kansas City warehouse on home and auto sup-

plies, and the other on tires and tubes.

Q. You stated your preference for Firestone tires. Would you mind telling us why you prefer Firestone tires? A. Well, I stated in the beginning that I was not a merchandiser. I didn't know anything about any of the products and I selected Firestone on the advice of a friend who is handling Firestone and was very successful.

(4672) Q. Does their national advertising have anything to do with your choice? A. No; it didn't have any-

thing to do with my choice.

Q. Did you say that you buy your batteries and tires exclusively from Firestone? A. I do now. I didn't always.

Q. I missed the date that you started in business. Would you mind letting me have that again please? A. It was sometime in the month of June, 1951.

# Cecil Baird, for Respondents-Cross

Q. And you have been at the same location ever since then, have you? A. Yes.

Q. Are conditions in Council Bluffs the same as they are in Omaha, as to finding operators for stations? A. Very much the same. That is because they are adjacent to each other.

Q. You stated that you have a third-party lease. What does that mean? A. Well, that is a standard lease that you have looked at there, I think.

Q. You do not own the property and lease it to Texas and rent it back, do you? A. No. An investor owns the property. He leases to the Texas Company. They lease

to the dealer.

Q. Do you handle anything else in the Firestone line (4673) other than the batteries and tires? A. Oh yes. I have fan belts exclusively. I buy a number of chemicals and additives from them, the same as I do the local supplier.

Q. So that while you buy the batteries and tires exclusively from Firestone, you also handle other items in there, in their TBA line, is that correct? A. Yes, and even in the same brand name they distribute it, but get it from local suppliers.

Q. What is their brand of filter, for example? A. They

have two brands of filters, at the present time.

Q. Firestone has? A. Firestone is one brand, and the other brand is A-C.

Q. And, as I understand it, you buy your A-C filters from another source. A. I do: Local.

Q. Who would that be? A. Sidles.

Q. Do you do repair work at your place of business? A. In a sense, yes.

Q. You give Sidles quite a bit of business in the socalled hard parts, do you not? That is, mufflers, pipes, and ignitions? A. Yes. Most of that is the Ballinger Automotive ignitions.

#### Cecil Baird, for Respondents-Cross

- Q. You also said that accessories represent two- (4674) thirds of your TBA. What is your current inventory of TBA items? Do you have any idea as to that? A. It would have to be approximate. Approximately \$3,000 in the accessories line.
- Q. Not in the accessories. I mean the total—tires, and accessories. What would be your total inventory. A. Around \$6,000.
- Q. And of that, then, I take it that tires and batteries represent \$3,000 of the total. It would represent about half of your inventory. A. Yes.
- Q. Is that your normal operating inventory? A. Except towards year-end.
- Q. What happens at year end? A. We try to reduce our inventory way down.
- Q. Then, in addition to tires and batteries which represent about \$3,000, or half of your inventory, there are these other items that you purchase from Firestone, is that correct, that is also part of your TBA inventory. They are included in the total of \$6,000. A. Oh, yes.
- Q. Then can you tell me what you mean when you say that two-thirds of your total TBA is in the accessory line? Do you mean two-thirds of your sales are accessories? (4675) A. That is what I mean to say.
- Q. Is that the dollar volume of sales that you mean?
  A. Yes.
- Q. In other words, tires and batteries do not move. Tires and batteries just don't sell. A. Maybe I should put it this way: I am not the tire and battery salesman that I am on the other line.
- Q. I see. What are your TBA sales monthly, let us say! Can you give us some estimate of that! A. Probably average around \$1,500 a month.
- Q. Then is it your testimony that a thousand dollars of that \$1,500 is in accessories? A. Yes, sir.

Q. Which would include these filters and other items

that you also buy from Firestone. A. Yes.

Q. But your operating inventory is about a total of \$6,000 worth of TBA, of which half, at least, is tires and batteries, is that correct? A. I think so.

(4676) LARRY O'BRIEN was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

#### Direct examination by Mr. Lorenzen:

- Q. Give your name to the reporter. A. Larry O'Brien.
  - Q. Where do you live? A. Lincoln, Nebraska.
  - Q. What business are you in? A. Service station.
- Q. Where is that station located? A. 2101 South 10th, Lincoln, Nebraska.

Q. How long have you had a business at that location?

A. A little over six years.

Q. Do you lease that station from someone? A. From the Texas Oil Company.

Q. And you have been a lessee for the whole time? A. Yes, sir.

Q. Do you know whether your lease is the same kind of lease we have been talking about, that is, the kind that renews itself every year? A. Automatically renewed, yes.

Q. And it is subject to ten-day cancellation at the (4677) end of any year. A. By either part, yes.

Q. But at the end of any year, is that right? A. Yes.

Q. And approximately what is your gasoline volume at the station now? A. Around 20,000.

Q. At one time was it higher? I mean lower? A. Yes, it was.

Q. What was it when you took it over? A. Around 12,000.

Q. Then you built it up to around 28,000, did you? A. Yes.

Q. And now it has fallen off a bit. A. Fallen off a bit, yes.

Q. During the time that you have been at this station

have you handled TBA! A. Yes.

Q. Will you tell us the reasons for handling TBA? A. Well, I believe the public demands it when they come in there in their car and you have got to have the two worked together—the gas and the TBA—to make a little money on the TBA as well as on the gasoline.

Q. Since you have been in the station, have you had an understanding as to what the Texas Company's TBA

(4678) policy and program is? A. Yes.

Q. And what has been your understanding? A. Well, that I am free to buy where I choose and they would like to have you stay with the major brands. But I am free to buy where I choose at the best price.

Q. In addition to that, they do, I hope, recommend to you Firestone and Goodrich, don't they? A. Yes, they do.

Q. And that recommendation has been made to you?

Q. Now, have you, since you have been a dealer, acted in accordance with that understanding, that you could buy wherever you choose? A. Yes.

Q. Has anyone from the Texas Company ever told you that if you did not buy sponsored line of TBA—that is Firestone and Goodrich—that your lease might not be renewed at the end of one year? A. No, sir.

Q. Did anything like that ever happen? A. No, sir.

Q. Or did they tell you that they would regard you with less favor in some other way, such as not paving your driveway or painting the station, or something like (4679) that! A. No.

Q. Nothing like that has ever happened. Now, your habit of buying TBA has changed somewhat in the course of the years, hasn't it? A. Some.

Q. At one time you bought quite a good deal of Fire-

stone, did you not? A. Yes.

Q. Now, tell us, there came a time when you discontinued that, did there not? A. Yes.

Q. About when was that? A. Oh, I would say about a year and a half ago or two years probably.

Q. What was the occasion for discontinuing that? A.

Well, the supply was the main reason.

- Q. That is, you were not as happy about the supply situation as some of these other witnesses have been, is that correct? A. That's right.
  - Q. And you had a disagreement with the supply point.

A. With the local supply point.

Q. With the local supply point. A. Yes.

Q. At that time what line did you change to? (4680) A. Well, in tires I went to Inland Tires, and as far as batteries, I went to Delco batteries.

Q. From whom did you buy it? A. F. D. Wilson Sales

Company.

- Q. During much of this time, have you also handled Gates fan beits? A. Yes. I think practically all the time. I handled Gates fan belts.
  - Q. Did you have those openly displayed? A. Yes.

Q. On a Gates display rack? A. Yes.

Q. With the Gates name on it? A. Yes.

- Q. And the Gates name on the sleeves of the fan belts?
  A. Yes.
- Q. During the time that you handled Inland Tires and Delco Batteries, did you have those openly displayed? A. Yes.
  - Q. With signs? A. Yes, on the inside of the station.
- Q. That is, the Inland Tire Company was displayed in a stand marked "Inland," is that right? A. Yes.

Q. Where anybody could et? A. That's right.

(4681) Q. I show you an exhibit which has been marked Exhibit 19 for identification, and I ask you whether that is a fair picture showing your display of Gate's fan belts. A. It is,

Q. Is that the way it has been for a number of years? A. Yes.

(4682) (The photo referred to, heretofore marked for identification Respondent's Exhibit 19, was received in evidence.)

#### By Mr. Lorenzen:

Q. You did not make any special arrangement to have this picture taken, did you? A. No, sir.

Hearing Examiner Kolb: The picture is in evidence, Mr. Lorenzen. There is no need for any further elaboration on it.

Mr. Lorenzen: I ask to have this picture marked for identification as Respondent Exhibit 41.

(The photo referred to was marked Respondent's Exhibit 41 for identification.)

#### By Mr. Lorencen:

Q. I show you Exhibit 41 and ask you if that is a fair representation of your display of Inland Tires and Delco Batteries during the time when you were handling them. A. Yes, sir; it is.

Q. Do you know about when that picture was taken? A. About the same time the fan belt picture was taken, I believe.

(4683) Q. Under the same circumstances as the fan belt picture is that correct? A. Yes, sir.

- Q. For how long a time did you continue to sell the Delco Batteries and Inland Tires? A. Well, sir, I still have some of them there.
  - Q. Are they still openly in display? A. Yes, sir.

Q. Where they can be seen? A. Yes, sir.

Q. There came a time, however, did there not, when you decided to go back to selling more Firestone Tires and batteries, is that right? A. Yes, sir.

(4684) Q. Will you tell us how that came about? A.

Well, I would say they had a good salesman.

- Q. Firestone had a good salesman? A. Must have had. But instead of going through the local store, I buy direct from the Kansas City warehouse.
  - Q. Do you get a better deal financially on them? A. Better price.

Q. Are your deliveries now satisfactory? A. Yes.

Q. Will you tell us whether you make more or less money on selling Firestone batteries now as against Delco? A. Well, I believe I do, for the reason that they are easier to sell.

Q. And how about Firestone Tires and—Firestone tires as against Inland tires? A. They are definitely easier to sell. You make more money on them.

Q. Do you also buy and display—I will take that back. About when did you go back to this buying from Firestone and buying from the warehouse? A. Oh, I would say about a year ago.

Q. Now you buy a substantial number of your batteries

and tires from Firestone. A. Yes, sir.

(4685) Q. What else do you buy from Firestone in the TBA line? A. A very small item, or very small items such as wax and polishes, and once in a while I will pick up at the local store.

Q. That is on a pick-up basis. A. Yes.

Q. From whom do you buy the balance of your accessories? A. From Wilson Sales Company mostly.

- Q. You buy most of your accessories from them, do you not? A. Yes, sir.
- Q. That includes fan belts, filters and radiator hose? Also battery cables, bulbs, spark plugs, thermostats? A. Yes.
- Q. Waxes and polishes? A. Most of them are bought there.

Q. Wiper blades? A. Yes.

- Q. Do you buy anything from Sidles? A. I buy there when Wilson runs out of what I need.
- Q. How about L. J. Messer? A. I buy some things down there called the hard line—tailpipes and mufflers, once in a while.
- Q. Do you buy any snow tires from him now? A. Just in cases where I didn't have them in the Firestone line.
- (4686) Q. How about Carl Anderson? A. I buy some brakes and anti-freeze from Carl Anderson.
- Q. Do you also buy from Wilson some anti-freeze and some additives and chemicals? A. Yes.
- Q. Do you openly display all of your TBA? A. Oh, yes.
- Q. Has any Texas Company representative ever told you to hide any of the TBA which you do not buy or did not buy from Firestone? A. Never.
- Q. How about your tires and Delco batteries? A. He was sitting there in the office all the time I had them, and he didn't say anything.

Q. You were never threatened. A. No.

- Q. There were never any threats to cancel your lease on account of that situation. A. No.
- Q. Did you make up your own mind to go back to Firestone when they put on this better salesman? A. Yes.
- Q. Was that the result of any threats made to you by the Texas Company? A. No. It was the better buying price and easier (4687) selling merchandise.

Q. Do you stock any batteries now other than dry charge? A. No, sir.

Q. Do you find those preferable over the wet charge

battery? A. Yes.

Q. Do you consider yourself as free to choose whatever TBA merchandise you think you can make the most money on? A. Yes, I do.

Q. And have you acted that way? A. Yes, I have.

Q. In your sales? A. Yes, I have.

- Q. Taking your total TBA sales—just a lump sum—what per cent of your TBA sales do you think are in tires?

  A. I would say about a third of them.
- Q. And what per cent do you think is in batteries? A. Oh, that would be a very small percentage of it. Probably twenty per cent. Ten per cent in there. It would be someplace in there.

Q. And the balance would make it 60 or 70 per cent in

the accessories. A. Accessories.

Q. And you say most of those you buy from the Wilson Company. (4688) A. Yes.

Q. Well, I don't know what happened to my arithmetic; I took a third and added ten or twenty per cent, and I came out forty or fifty which leaves fifty or sixty per cent in accessories. It is not 60 or 70 per cent.

Now, do you think your batteries are over ten per cent or substantially over, or not? A. No, I don't think it would

be substantially over.

Q. So we would get about thirty-three and a third per cent in tires and maybe cen per cent in batteries and the balance is in accessories, is that right? A. Yes.

Mr. Lorenzen: I won't add it up this time. That is all.

# Larry O'Brien, for Respondents-Cross

#### Cross examination by Mr. Dias:

Q. Did you say that the Firestone tires were easier to sell? A. I believe they are.

Q. What makes them easier to sell? Better quality or what? A. They are nationally advertised, and I get—I believe they are better quality tires than the Inland tires. The Inland tires, are not really—when you sell a tire that is not nationally advertised, you have to cut the price on them.

(4689) Q. Wouldn't the same hold true for batteries? A. No. I think different on that.

Q. The Firestone battery isn't necessarily nationally advertised, is it? Except for the fact that it carries the Firestone name? A. No.

Q. Do you recall ever seeing national advertising devoted exclusively to Firestone batteries? A. No, I don't think I have.

Q. Have you ever seen national advertising devoted exclusively to Auto-Lite or Delco, for example? A. Yes, I have.

Q. And doesn't Wilson handle Delco? A. Yes.

Q. When did you state that you started in the station, Mr. O'Brien? A. About 1952.

Q. And from that time up until what would be the middle of 1956 you handled Firestone and dropped Firestone. A. Yes.

Q. And resumed Firestone when? A. About six months later.

Q. In other words, you were off the Firestone line for about six months. A. Although I still had some in stock.

(4690) Q. Did you tell me the month during 1952 that you started at the station? A. It was in April.

Q. And can you place the month that you discontinued the Firestone line? A. No, I can't, right to the month, no. It was approximately a year and a half ago.

Q. Do you do any repair work at the station? A. Yes.

- Q. Do you do any retreading? A. No.
- Q. Does this picture show retreading? There is part of the word cut off. This Respondent's Exhibit 19 is what I am speaking of. Do you notice this here (indicating) on this valence—there is "T-r-e-a-d-i-n-g." Is that just an advertising for retreading work, or do you do it? A. That is just advertising. I believe that is a decal on the window on the outside.
- Q. What brand is that advertising? A. That is Firestone.
- Q. Do you have quite a few Firestone signs out and about the station? A. Yes.
- (4691) Q. Did you tell us what you bought from Sidles? A. Well, not naming one particular thing. Just what Wilson happens to be out of. Like different pieces of radiator hose or fan belts. They both all handle the same line.
- Q. Generally speaking, your purchases are from either Wilson or Firestone, is that correct? A. Yes.

#### Redirect examination by Mr. Lorenzen:

- Q. You got these signs that you have, these Firestone signs, from Firestone, did you not? A. After a battle I did:
  - Q. You had to ask for them. A. I did.
  - Q. You had a tough time getting them? A. Yes.
  - Q. Texas had nothing to do with that. A. No.
- Q. Now, you testified that you thought differently about batteries than tires. Do you mean the customers would accept your recommendation on the batteries? A. They would accept my judgment more so on batteries than on tires.

Mr. Lorenzen! That is all.

(4692) TONY BONACCI was thereupon called as a witness for the Respondents and, having been first duly sworn, testified as follows:

#### Direct examination by Mr. Lorenzen:

- Q. Give your full name to the reporter. A. Tony Bonacci.
- Q. Where do you live? A. 7071 Charles Street, Omaha, Nebraska.
- Q. What is your business? A. I'm a service station operator.
  - Q. Where? A. 16th and Webster, Omaha, Nebraska.
- Q. Do you lease that service station from the Texas Company? A. Yes.
- Q. And are you on one of these leases that has a yearly renewal clause in it? A. Yes.
- Q. Subject to cancellation at the end of any year? A. Yes.
- Q. Now, how long have you been a lessee? A. Twenty-five and a half years.
- Q. And at the location where you are now, how long have you been there? (4693) A. Eighteen and a half years.
- Q. About what is the gasoline volume of your station?

  A. From twelve to fourteen thousand a month.
  - Q. Do you handle TBA? A. Yes.
- Q. What do you think about the necessity for handling TBA at your service station? A. Well, I find it necessary that I handle TBA to make a living out of it.
  - Q. Do you make money on the TBA? A. Yes.
- Q. Do you find it desirable to handle it for your gasoline customers? A. Yes.
- Q. Do you find it helps your gasoline sales? A. Yes, it does.

- Q. Now, have you had an understanding of the Texas Company's TBA policy and program while you have been a dealer? A. Yes.
- Q. I guess we don't have to go back twenty-five years, but let's talk about the last ten at least. What has been that understanding? A. That they recommend that I sell or handle only National Brand TBA and they recommended Firestone or Goodrich, but I was free to stock any TBA I wanted.
- (4694) Q. You understood you were free to do that, did you? A. Yes.

Q. And have you acted in accordance with that understanding during the time you have been a dealer? A. Yes.

- Q. Now, has anybody from the Texas Company ever told you that they didn't mean what they said and that in fact you had to buy from either Firestone or Goodrich! A. No. No one has ever said that to me.
- Q. Did they ever tell you that if you didn't buy from Firestone or Goodrich your lease would be cancelled? A. No.
- Q. Or that they'd treat you badly in any other way? A. No.
- Q. Will you tell us from whom you buy your TBA? A. I buy from—some from Firestone on 20th and Harney, and I buy some from Sidles's Company, and I buy some from Boylan Tire.
  - Q. Do you buy anything from Carl Anderson? A. Yes.
- Q. What do you buy from them? A. Ignition parts and a few batteries, Delco Batteries—pardon me. Let me correct myself. From Sidles I buy ignition parts.
- Q. We are talking about Anderson for the minute. And you said (4695) you bought some ignition parts. A. Yes, and Zerex anti-freeze.
- Q. Do you buy any batteries from them? A. Yes, I bought a few batteries.

Q. Were they Auto-Lite? A. Auto-Lite.

- Q. Do you buy anything from Al's Auto Supply? A. Yes.
- Q. What do you buy from them? A. I buy national batteries. I have bought Exide batteries from them when they were handling them.

Q. And they discontinued Exide? A. Yes.

Q. And went to National? A. Yes.

- Q. And you stayed with Al's and bought National? A. Yes.
- Q. About what percentage of the batteries that you handle do you buy from Al's? A. I'd say about fifty per cent. You mean of the batteries only?

Q. Yes. A. About fifty per cent.

- Q. Do you buy any batteries from Sidles? A. Yes, just a few. Maybe ten per cent.
- (4696) Q. What do you buy from them, Delco? A. Yes, Delco batteries.
- Q. And the balance you buy from Firestone, do you? A. Yes.
- Q. You buy most of your tires from Firestone? A. Well, no, not most of them. I'd say about half.
- Q. And from whom do you buy the other half? A. From Boylan Tire and Goodyear.
- Q. Well, now, the tires that you buy from Boylan are mostly recapped tires, aren't they? A. Yes.
- Q. And the tires that you buy from Firestone are mostly the new tires! A. New tires.
- Q. Will you tell us why you buy Firestone instead of some other brand? A. I find that it's always easier for me to sell. It has the public acceptance.
- Q. Is it in your neighborhood that Firestone is near the top, is it? A. Yes, I think so.
- Q. What do you buy from Sidles? In addition to those Delco batteries? A. I buy all of my oil filters and I buy

some water pumps and shock absorbers, wiper blades, and rust inhibitor and (4697) rizlone, and Casite.

Q. That's what is known as an additive or chemical, is it, Casite! A. Yes.

Q. And the anti-freeze you buy is Prestone, is it? A. Yes. Prestone.

Q. Do you display that Prestone during the season when you sell it? A. Yes.

Q. And where is it? A. Well, during the fall and the beginning of the season, I have it inside and outside.

Q. How about your Delco and National batteries. Where do you keep those on display? A. In the inside and outside.

Q. Do you keep them in the window? A. Yes.

Q. Where anybody can see them? A. Oh, yes.

Q. With the name on the battery case? A. Yes.

Q. Now, going back to Sidles, do you buy fan belts from them? A. Oh, yes, a hundred per cent fan belts.

Q. And radiator hose a hundred per cent? (4698) A. Yes.

Q. Spark plugs a hundred per cent? A. Yes.

Q. Thermostats? A. Yes.

Q. All of your thermostats? A. Yes.

Q. Do you display your Gates fan belts? A. Yes.

Q. That is what you buy from them, Gates! A. Gates.

Q. Do you display it on a display rack? A. Yes.

Q. Does your display rack look just about like this one of Mr. O'Brien's shown on Exhibit No. 10? A. Yes. My hose rack is similar to this.

Q. Your hose rack is similar to it also? A. Yes.

Q. And it has the name Gates on it! A. That's right.

Q. And the fan belts identified had the name Gates on the display? A. Yes.

Q. And the hose also? A. Yes.

- (4699) Q. You also buy seat covers, do you not, from the Omaha Seat Cover Company? A. Yes, I have been but they are just going out of business now, or they have gone out of business about a week ago.
- Q. But before that you bought a hundred per cent from them? A. Yes..
- Q. Now, of all of your TBA, about how much do you think is in tires? What per cent of the TBA that you sell do you think is in tires? A. About thirty per cent.
- Q. And about how much is in batteries? A. About ten per cent.
  - Q. I think that leaves sixty per cent? A. Yes.
  - Q. And if it does, is that in accessories? A. Yes.
- Q. Now, what do you find about your customer's demand in tires. Do they demand something that has a national name and national advertising? A. Yes.
  - Q. You do find that to be so? A. Yes.
- Q. What about batteries. What do you find the customer's state of mind to be there? (4700) A. Well, on batteries it's not quite so. I could sell—I find that I could sell Delco batteries easier than I could sell Firestone.
  - Q. Then why do you handle any Firestone batteries?

    A. Well, I have some customers that ask for Firestone.
  - Q. And do you handle the Firestone in order to satisfy those customers? A. Yes.
    - Q. And you handle the Delcos for others? A. Yes.
  - Q. What about National, is that a price proposition?

    A. Yes, it is. I get a real good price on those and I use that for competitive—
    - Q. That's a cheaper line? A. Yes.
  - Q. Now, how about stocking of batteries. Do you stock any wet charge batteries? A. No. No wet charge.
    - Q. All dry charge? A. Yes.
    - Q. Do you find that more satisfactory? A. Yes.

- Q. What do you estimate the total amount of TBA which you buy from Firestone direct? A. About fifteen per cent.
- (4701) Q. And the balance from some source other than Firestone? A. Yes.
- Q. Now, do you openly display all of your TBA? (4702)
  A. Yes, I do.
- Q. No matter whether you buy it from Firestone or anyone else? A. I display everything.
- Q. Has anyone from the Texas Company told you to hide it? A. No.
- Q. Have they ever told you that they would cancel your lease if you didn't stop displaying it? A. No.
- Q. Or that they would treat you badly in some other way? A. No.
- Q. Do the Texas people know you handle this non-sponsored TBA? A. Yes.
- Q. Do you get any help from the Texas Company in your merchandising of TBA? A. Yes, I do.
- Q. What kind of help do you get? A. Well, the salesman comes and stops in and helps me merchandise—merchandising, and in the follow-up, he helps me with that. And I get streamers from them. And I got a lot of help from these dealers' meetings that we hold spring and fall, and monthly too, monthly meetings.
- Q. Do you find that helps in the sale of both the sponsored and non-sponsored TBA? A. Yes.
- Q. Has any representative of the Texas Company ever told you (4703) they wouldn't help you sell your non-sponsored TBA? A. No.
- Q. And they do help you in all the TBA, is that right?
  A. Yes, they do.
- Q. You still buy from the Sidles Company, do you not? A. Yes.

### Tony Bonacci, for Respondents-Cross.

Q. At one time did you buy more from the Sidles Company than you do now! A. I probably have. I bought from the Sidles Company now for about twenty years.

Q. And they are your main supplier of accessories, are

they not? A. Yes.

Q. Does the Sidles man call on you? A. Yes.

## Cross examination by Mr. Dias:

Q. Mr. Bonacci, you have been a Texas Company lessee for twenty-five years? A. Yes.

Q. Has their policy over the years changed in connection with TBA? (4704) A. I haven't noticed any change.

Q. You state that you still buy from Sidles. Are you still purchasing Delco batteries from Sidles? A. Yes.

Q. How many batteries would you guess you used during a year's time! A. Delcos!

Q. Any battery. A. How many batteries in all? I would say about fifty batteries.

Q. And of that fifty I take it that some would be this National that you buy from Al's Auto? A. Yes.

Q. About how many would be Delco? A. I would say

about five per cent.

- Q. In other words, in a year's time you would only sell about two Delco, is that correct—three? A. About five.
  - Q. Five. Ten per cent, then? A. Ten per cent.

Q. And when you buy Delco batteries you always get them from Sidles, do you! A. Yes.

- Q. What does a Delco battery cost you roughly? A. Well, they range in price. Group 1 will cost me about (4705) \$16.00.
- Q. And you buy about five 1's a year from Sidles? A. Yes.

## Tony Bonacci, for Respondents-Cross

Q. How many have you bought this year? A. I would say about two. I sell most of my batteries in the fall, going into the winter.

Q. I see. Have you Delcos from Sidles this year? A. I

think I bought a couple.

Q. You are not sure of that though, are you? A. Well, I don't know. I don't remember. But I know I must have bought two of them this year.

Q. Do you do repair work at your station? A. Just real

light repair work.

Q. Do you purchase so-called hard parts from Sidles?

A. Yes.

Q. What would you consider as hard parts? A. Tail pipes, and mufflers and shock absorbers.

Q. How about equipment? Do you purchase equipment

from Sidles? A. Yes.

Q. You made quite a large purchase of equipment this year from Sidles? A. This year? I don't know. Not this year, I don't think. I did—well, I bought some headlight adjusters.

Q. What would something like that cost? Is that expensive equipment? (4706) A. No. It's \$59.00 for a package.

deal, with some seal beams with it.

Q. Isn't it the case that you usually buy more so-called hard parts and things of that sort from Sidles than batteries and filters, etcetera; dollarwise, not unitwise. Dollarwise aren't your purchases more in that line than in batteries and accessories? A. Oh, I would say around fifty-fifty. I buy all my filters from them.

Q. And from Carl Anderson—what do you buy from Anderson! A I pick up some ignition parts, not many, and I buy Zerex there, and maybe just a couple of Auto-hite

batteries during the course of the year.

Q. When would you say is the last time you did business with Anderson? A. Let's see—I don't remember.

## Tony Bonacci, for Respondents-Cross

Q. It was several years back, as a matter of fact, wasn't it? A. I don't remember.

Q. How about Storz? Do you purchase from Storz at all? A. Very little. I buy most of my ignition parts from Motor Electric.

Q. Is that an Anderson competitor? A. Yes.

Q. Now, on this estimate of 60% of TBA accessories, what percentage of that, of the accessory sales—first, what is (4707) your dollar volume of sales, TBA, for the year?

A. Say about nine thousand.

Q. That would mean somewhere around \$5,400.00 would be in accessories—60% of nine thousand, roughly speak-

mg! A. Yes.

Q. Of that \$5,400.00, how much of that would be devoted to, oh, shock absorbers, mufflers, tail pipes, and that sort of thing? A. I would say about fifty per cent.

Q. What other items do you buy from the Firestone District Store? That is your supply point, is it not? A.

Yes.

Q. You buy your new tires from Firestone? A. Yes.

Q. Do you buy any Firestone batteries? A. Just a few. Not too many.

Q. Do you buy any of their filters? A. No. I buy all my

filters from Sidles.

- Q. How about hose and belts? A. That comes from Sidles.
- Q. Did you say that you bought all your anti-freeze from Sidles A. Oh, no.
- Q. Could you tell us how much you bought from them? Take '57. Would it be a case, two cases? (4708) A. Well, I bought more than that from him. I bought I think about fifteen cases.
- Q. Fifteen cases. What does that sell for, a case, approximately? A. Well, they cost me \$2.12.
  - Q. \$2.12 a case? A. gallon.

# Tony Bonacci, for Respondents-Cross

Q. How many gallons to a case? A. Six gallons to a case.

Q. Are you sure you didn't buy just one case in '57 from Sidles? A. I think I bought fifteen. I think I bought an order of ten, and an order of five.

Q. Can you tell us where else you buy anti-freeze? A.

I buy PT from Texaco.

Q. And do you buy your anticipated needs for the full season and then fill in from others? Is that the way you operate it? A. Well, I usually start out with about twenty or thirty cases.

Q. And that is PT? A. No, I mean altogether.

Q. Altogether? A. Then I keep ordering it from then on.

Q. And you order from whom, from Texas or the individual? A. From Sidles, or from Texaco. Carl Anderson.

Q. Do you carry any Goodrich tires in the station? (4709) A. No.

Q. You do not? A. No.

Q. Don't you have some Goodrich tires in the station, with one of those cardboard streamers advertising Goodrich? Don't you have them right in the station? A. I don't handle Goodrich at all.

Q. You don't have any? Do you have the credit card, one of those credit card machines? A. Yes.

- Q. Do you use the credit card on all TBA merchandise you sell? A. Anything I put on the card runs through the credit card.
  - Q. Whether it is Goodrich or Firestone, or not? A. Yes.
  - Q. Have you ever been reprimanded for that ? A. No.
- Q. Do the credit slips show that they are other than Goodrich or Firestone? A. I don't write the name in there, just put the number of tires, and the size, and the price.

Mr. Dias: I have nothing further.

## Tony Bonacci, for Respondents-Redirect

## Redirect examination by Mr. Lorenzen:.

Q. Now, you don't identify the brand name even if it is Firestone, do you! (4710) A. No.

Q. Actually there isn't enough space on one of those charge slips to put the name? A. That's right. I wouldn't even be able to put it in if I did want to.

Q. So everything is unidentified, whether it's Firestone

or anything else? A. That's right.

- Q. Now, do you know that the Firestone line includes tail pipes and mufflers? A. Yes, I know that Firestone handles tail pipes and mufflers.
  - Q. But you don't buy those from Firestone? A. No.

Q. You buy those from Sidles? A. Yes.

- Q. How about shock absorbers? Are they in the line too? A. Yes. Firestone handles shock absorbers, but I buy mine from Sidles.
- Q. So that all the items which were included in your accessory estimate about which Mr. Dias asked you are items which are also included in the Firestone line? A. Yes.
- Q. And then when you gave me an estimate that only—I think it was around 20%, 20% or 25% of all of your TBA was bought from the Firestone store, it was made on that basis, (4711) was it? A. Well, I think—I didn't think it was that high.

Q. I think you said fifteen, is that right? A. Yes.

- Q. And the balance of it is bought from someone else?
  A. Yes.
- Q. And that was on the basis of including the mufflers and tail pipes and shock absorbers in your estimate of accessories? A. Yes.

(4716) M. A. BUNTZ was thereupon called as a witness for the Respondents and, having been first duly sworn, was examined and testified as follows:

# (4717) Direct examination by Mr. Royall:

Q. What is your full name? A. M. A. Buntz.

Q. And what company do you work for and what position do you hold with that company? A. Firestone Tire and Rubber Company. My position is stores supervisor.

Q. What territory do you work in? A. I headquarter in Omaha and the area that I supervise consists of, roughly, two-thirds of Nebraska, a portion of South Dakota and about the western third of Iowa.

Q. How long have you been in that position? A. About

two and one-half years.

Q. And how long have you been with Firestone? A.

Approximately 13 years.

- Q. Are you familiar with the agreement between Firestone and the Texas Company with reference to TBA? A. Yes, sir.
- Q. Are you familiar with how that agreement is being carried out in your territory? A. Yes, sir.

Q. By Firestone? A. Yes, sir.

Q. In the course of your activities have you had occasion (4718) to visit the various service stations in the area? A. Yes, sir.

Q. Do you do that periodically or repeatedly, or how do you do it? A. Well, now, periodically; a couple years

ago I did it quite regularly.

Q. When was that; at what time? A. Prior to April 30, 1956.

Q. What position were you in then? A. Manager of

our 20th and Harney, Omaha, Nebraska, store.

Q. How long had you had that position? A. I was there close to two years, not quite.

Q. Who sells Firestone products to the Texas stations in your territory? A. Well, in addition to our 20th and Harney Store being a supply point we sell direct, which would be through our district warehouse in Omaha and our Kansas City warehouse but right in the Omaha city area, the metropolitan area; that is the source of Firestone products.

Q. Are sales made from the places and by the persons you have just described, or are they made by Texas Company? A. They are made primarily by the Firestone people.

Q. Does the Texas Company recommend Firestone to the stations with which you have a sponsorship arrangement with (4719) the Texas Company? A. Yes, sir.

Q. Despite that recommendation—do you have to put

out effort to sell? A. A lot of it; a lot of it.

Q. And do you have to do that continuously? A. Absolutely, yes, sir.

O. Sometimes the recommendation is not followed, is

that right? A. That is for sure, yes, sir.

Q. In fact, as to many matters it is not followed on

many products, is that right? A. That is right.

Q. In the contact with the dealers in the Omaha district have you personally known or have you learned of any pressure put on dealers to buy your TBA, pressure from the Texas Company!

(4720) A. No. sir.

## By Mr. Royall:

Q. Do you have or have you been informed of any coercion or forcing—

Mr. Dias: I object to the latter as hearsay.

#### JA 1447

## M. A. Buntz, for Respondents-Direct

## By Mr. Royall:

Q. (continued) -by-

Mr. Royall: May I finish the question? Hearing Examiner Kolb: Yes.

## By Mr. Royall:

Q. (continued) —by Texas or any assertion of any power to control the purchases?

A. No, sir.

## By Mr. Royall:

Q. Do you know or have you heard of any threats of cancellation by the Texas Company in connection with any TBA transactions at all?

(4721) A. Absolutely not.

## By Mr. Royall:

Q. Have you heard of any discrimination against any dealer—

Mr. Dias: I object.

## By Mr. Royall:

Q. (continued) —or do you know of any discrimination by any Texas dealer by reason of any TBA discrimination?

Mr. Dias: I object. Hearing Examiner Kolb: Overruled.

A. No, sir.

### By Mr. Royall:

Q. Is and has your relationship with the dealers that handle Firestone products been a close and continuous one? A. Yes, sir.

Q. In your opinion if there had been any of the matters I have just asked you about by Texas Company in your opinion would you have been informed of it? A. Yes,

oir.

Q. Now, have you in the course of your employment jointly visited Texaco stations which have been designated under sponsorship by Firestone; have you visited them jointly with Texas representatives? A. Yes, sir.

(4722) Q. On such trips have you at any time seen any

evidence of any pressure—, A. No, sir.

Q. —force, threats, discrimination, undue influence on the station by Texas personnel? A. Absolutely not.

Q. Have you heard at that time or at any other time or know of any threats of any type of retaliation by the Texas— A. No, sir.

Q. —Company in connection with any TBA transac-

tions? A. No, sir.

. Q. Or in connection with the handling of non-sponsored goods? A. No, sir.

Q. Mr. Buntz, have you from time to time heard Texas dealers express themselves as to their feeling of independence and their right to select, themselves, from whom and how much TBA they will purchase? A. Yes, sir.

Q. Have you, by chance, heard some of them boast of their independence? A. That is right.

Q. Was that at times when you were seeking to sell them? (4724) A. Unfortunately, yes.

- Q. Now, Mr. Buntz, has Firestone done well in its sale of Firestone tires in your district? A. Exceptionally well, yes.
- Q. Do you know how their success is, as related to the other districts in the United States? A. It is one of the leading districts in the country, the Omaha district.

Q. Has that been true for some years? A. Yes, sir.

- Q. In general, what action on the part of Firestone has been necessary to achieve that result in your district? A. Well, first of all I think it is the quality of the product which is the best in the business, and our advertising program and probably one of the things is we think we are the best salesmen and I include myself in that.
- Q. Does the matter of tire service—service on your tires enter into it? A. Very definitely; that is one of the most important ones.
- Q. Will you describe briefly in what way you think your service with Firestone products is exceptional? A. Well, in the first place we have the largest facilities, warehouse facilities, that is, in the Omaha area. (4725) We have a more complete line of products, and for that reason naturally we can give better service to our dealers than our competition who do not have those facilities.

Q. Does the question of promptness of delivery contribute to your success in that area? A. Yes, sir.

Q. Does the existence of a dependable and constant supply of the needed products play a part? A. Yes, sir.

- Q. Now, as you have travelled around your district and contacted the service stations have you observed whether or not there are non-Firestone and non-spansored tires in these stations? A. Yes, sir.
- Q. You have been interested in that, have you not, sir?

  A. Very definitely, yes, sir.
- Q. That provides an opportunity for salesmanship where that condition exists, does it not? A. Yes; that is absolutely right.

- Q. Have you a considered judgment as to how many of the Texas stations with which you deal,—what percentage of the Texas stations with which you deal have some stock of non-sponsored tires,—have you an opinion? A. Yes.
- Q. What is that percentage? (4726) A. It is approximately 50 percent.

Q. Would that figure vary in the case of batteries? A.

It is roughly the same figure.

Q. Now, what about accessories,—what percent would have non-sponsored accessories? A. They would all have non-sponsored,—100 percent.

Q. Have you ever seen a Texas station in your district which did not have some non-sponsored accessories? A.

No, sir.

Q. Now, these various non-sponsored products about which I have inquired,—are they visible in the stations?

A. Surely.

Q. Have you seen displays in the stations? A. Yes, sin

- Q. In the case of joint calls which you have made with Texas representatives to these stations where there are non-sponsored goods visible to you; have you ever heard a Texas representative ask the removal of the display of non-sponsored goods? A. No, sir.
- Q. Have you ever heard a Texas representative suggest that the non-sponsored goods be concealed? A. No, sir.
- Q. Have you ever heard any threat of any kind made by the Texas Company to a dealer because of the display or (4727) stocking of non-sponsored goods? A. No, sir.

Q. Do you know, Mr. Buntz, the value and cost of the various TBA items that are sold? A. Yes, sir.

Q. And do you know well the value or the sale price of the non-sponsored goods that are sold? A. Yes, sir.

(4728) Q. Do you have to keep up with those prices as a matter of your salesmanship? A. That is right.

Q. Are you able from your view of the stores as you go around to get a good opinion, one satisfactory to yourself, as to the value within reasonable limits of the stock in the

various stores? A. Yes, sir.

- Q. Are you, through your visits to these stores, in a position to make a reasonably accurate estimate and do you have a reasonably accurate opinion within a reasonable margin of error of the value of the non-sponsored goods, non-sponsored accessories, in proportion to the entire stock of the accessories in the stores in your district? A. Yes, sir.
- (4729) Q. Will you tell me what, in your opinion, is the percentage of non-sponsored accessories in relation to the total accessories carried in the Texas stations within your territory?
- (4732) Q. Will you answer the question? A. 75 per cent.

Hearing Examiner Kolb: Is what? The Witness: Is non-sponsored.

# By Mr. Royall:

Q. Do you have an opinion as to a similar percentage as to all TBA—that is, tires, batteries, and accessories?

A. Roughly.

Q. What would that be? A. In the neighborhood of 40

percent.

(4733) Q. Now, Mr. Buntz, I believe you have previously testified, am I correct in this,—if not, correct me,—

that in the sale of sponsored TBA your district is one of the leading ones in the country? A. That is right.

Q. You do not know how much more the non-sponsored goods would be in territories aside from your district? A. No.

Q. Do you know? A. I do not know.

Hearing Examiner Kolb: Do I understand by that question and answer that the witness is testifying to sales to Texas service stations or to Firestone generally?

Mr. Royall: I understood he said the sales to Texas.

Hearing Examiner Kolb: I thought he said he was the leading division in Firestone sales.

Mr. Royall: TBA,

Hearing Examiner Kolb: To Texas stations or generally?

The Witness: I was thinking it was in reference to the Texas stations.

- (4734) Q. Mr. Buntz, is the Texas Company of any assistance to your company in your company's sale of TBA merchandise in your district? A. Sure.
- Q. Can you give some illustrations of how that company helps in the sale? A. Well, with their merchandise programs and their mailing programs and displays and promotions. There are various types, numerous helps that we have with our company in selling the TBA items, yes, sir.
- Q. Does that also include their method of record-keeping and their dealers' magazine? A. Sure.

Q. Do you know Mr. Clem Acamo! A. Yes, sir, I do.

Q. Did you at any time make a call on him, a joint call (4735) together with a Texas representative? A. I did.

Q. Was it for the purpose of trying to sell sponsored

seat cushions? A. That is right.

Q. Where did he buy them? A. He didn't buy them

from as; he bought them from our competition.

Q. Now, there is in the testimony given by the Complainant, on page 1196 of the record a representative of Sidles testified: "that Mr. Acamo had cartridges in the back room". Will you tell us where cartridges are normally kept by service stations? A. In the back room.

Q. Now, Mr. Buntz, do you know whether Mr. Acamo had two stations in your district in 1951? A. Yes.

Q. And did he dispose of or sever his connection with one and just leave him one in 1954? A. That is right, yes.

Q. Now, the station that he did not have from 1954 on, was that a station that bought, largely, repair parts? (4736) A. I didn't understand.

Q. Largely repair parts? A. Which station?

Q. The one he got rid of? A. That is right. That is the one that did a lot of repairing like that.

Q. And does Anderson and Company sell, largely, re-

pair parts? A. That is right.

Q. Now, do you know whether or not Acamo buys and has bought tubes from Weiner Tire and Auto Supply Company? A. Yes, sir.

Q. He has! A. He has.

- Q. Do you know whether he has bought plugs, shock absorbers, brake linings, and brake parts from Kuehn-Baymiller? A. Yes, I do. He has bought them from them.
- Q. Has he bought sparkplugs and Fram filters from Sidles! A. Yes.

Q. And has he bought chemicals from Al's Auto Parts?

A. Yes, sir.

Q. Do you know a Harley Fisher? A. I sure do.

Q. Does he buy from you Firestone tires and batteries (4737) on a pickup basis? A. He did.

Q. He did? A. Yes.

- Q. Do you know whether or not he bought Corn Belt tubes? A. Yes.
  - Q. That is a non-sponsored item, is it not? A. Yes.
- Q. How do you know Mr. Fisher has bought Corn Belt tubes? A. I have seen him in his place of business and I have '(4738) seen the salesman called on him.

Q. Has he also bought belts and hose, and anti-freeze from Storz? A. Yes.

Q. How do you know that? A. I have seen him in his station.

Q. And do you know who handles those various items I have talked to you about, in that area? A. Yes.

- Q. Now, there were some questions in yesterday's hearing that were directed at what items are included in TBA and I would like to ask you whether or not Firestone TBA includes mufflers, tail pipes, and shock absorbers? A. It does.
  - Q. Does it also include brake lining? A. Yes.

Q. Do you know Edward Schulte? A. I do.

Q. There is testimony, at pages 1390 and 1391, from a representative of Storz Supply Company that Edward Schulte did not openly stock tires or batteries; is that correct? A. He didn't stock any tires.

Q. He didn't stock anything? A. No.

Q. What size dealer was he? (4739) A. Very small.

Q. What kind or type of station did he have? A. It was one of the older type stations with limited office or display space.

Q. Did he buy his tires on a pickup basis? A. Strictly

Q. Have you ever seen temporarily any unsponsored tires in that station! A. Yes, sir.

Q. What were they? A. It was the Century tire.

Q. They were not concealed from you, were they? A. No, sir. -

- Q. Now, in addition to the sales of TBA to the Texas Company stations, do you make sales to station operators who are not on the sponsorship agreement? A. We sure do.
- Q. Do you make sales to service station dealers who are under sponsorship of products other than Firestone?

Mr. Dias: I object. It has no part in this case, your Honor.

Hearing Examiner Kolb: The objection will be sustained.

## By Mr. Royall:

Q. Do you seek and obtain TBA business from stations (4740) sponsored by Goodrich?

Mr. Dias: I object.

Hearing Examiner Kolb: What is the basis of the objection?

Mr. Dias: I don't believe the— I will withdraw the objection.

Hearing Examiner Kolb: You may answer.

#### A. No.

#### By Mr. Royall:,

Q. Do you seek and obtain business from service stations which are sponsored by Goodrich? A. Yes.

Q. To your knowledge is there any agreement between Firestone and Goodrich for either to lay off the other one?

A. Absolutely not. They are our biggest competitor and we are after them, I will tell you that.

Q. And is that true of other sponsored lines? A. Yes,

sir.

Q. That is, they may not be biggest but they are competitors? A. Yes; we are after all of them.

Q. Were you in court yesterday when the Omalia

Texaco dealers testified? A. I was.

Q. Are you familiar with those dealers and their (4741) stations? A. Practically every one of them, yes.

Q. Did the testimony of those dealers represent a fair and typical cross-section of the Texas stations in the Omaha district?

Mr. Dias: I object.

Hearing Examiner Kolb: Overruled.

A. It sure did. It was very representative and typical,

## By Mr. Royall:

Q. Taken together, does the testimony of those witnesses give an accurate picture of the Omaha district in matters covered by their testimony?

Mr. Dias: I object.

Hearing Examiner Kolb: Overruled.

#### A. Yes.

## (4742) Cross-examination by Mr. Dias:

Q. Mr. Buntz, those station operators that testified yesterday, which ones in particular were you familiar with—Mr. Smiley? A. Yes, sir.

Q. Baird? A. Yes.

Q. O'Brien? A. He would be the only one—I've been in his place, but I'm not as familiar with him as the rest.

Q. He's at Lincoln? A. Right.

Q. Your territory does not extend to Lincoln! A. It extends to Lincoln, but he was a direct dealer, as I stated—store supervisor.

Q. What is a direct dealer? A. A direct dealer is one that sold by territory salesman, and his merchandise is delivered from our district werehouse on tires and tubes, in Omaha, and then the batteries and accessories from Kansas City.

Q. Well, wasn't Mr. Brooks in the same position? A. Well, I know Mr. Brooks very well. In fact, I went to high school with him, and I worked for him when he was a store manager. So I've known Bill for years, and for that reason (4743) I knew his operation very well.

Q. He too buys from Kansas City? A. That's right.

Q. Incidentally, on those sales from the warehouses, does Texaco receive a commission on those TBA purchases? A. It makes no difference where they come from. If they're part of our sponsored items it's my understanding, at least, that—I'm sure it's the same from the warehouses as it would be from the supply points, yes.

Q. How about Mr. Bonacci? Are you familiar with his

station? A. Tony? Sure.

Q. Is he an approved Firestone dealer? In other words, was his station submitted to Firestone for approval under this commission plan? A. Well, we tried to sell him just like any other dealer, yes.

Q. No, my question is, was his hame submitted to Firestone to be approved under this commission plan. A. I assume so. He's been a dealer for years—prior to my coming with the company. I assume so. I couldn't answer that.

Q. Do you know whether or not sales of Firestone products to Bonacci—rather, whether or not Texaco receives commissions on Firestone sales to him? A. Sure.

Q. What sort of a station is that that he has? Do you recall? A. Well, yes. He's located at 16th and Webster. It's a (4744) downtown location in the City of Omaha.

Q. And is that a new or an old station? A. Oh, it's

relatively new. It's a good, modern station.

Q. Has he been in there about fifteen years or more? A. At least.

Q. Was the station rehabilitated at one time? A. I don't know for sure. I believe so. I'm not sure.

Q. You mentioned that various items in the Firestone TBA line-will you tell us which of the products in the Firestone TBA line do not carry the Firestone name? Let's start with mufflers, for example. A. They carry the Firestone name.

Q. That is Firestone! A. That's right.

Q. And how about tailpipes? A. That's—they do also.

Q. And shocks? A. No, sir.

Q. What are the shocks? A. Monroe.

Q. Monroe? A. Right.

Q. And brake lining? A. Firestone.

- Q. How about filters? (4745). A. We have Firestone and A-C.
- Q. I assume that your batteries carry the Firestone name? A. They do.

Q. Plugs! A. We have Firestone, Auto-Lite and A-C.

Q. And windshield wiper equipment, Mr. Buntz? A. We have Trico.

Q. I believe that you stated you were thoroughly familiar with all the prices on these items, including those of your competitors? A. That's right.

Q. Well, assuming that you had a dollar figure. Could you estimate the amount of material that that represented tires, batteries and accessories, so on? A. (No response.)

Q. Is my question clear? A. Not completely, no.

Q. Let us assume that you've had a resale price on tires. Let us assume that a figure before you was \$1,000.00 worth of tires sold during a month. Could you estimate from that the number of tires that might include? A. Oh, roughly, yes.

Q. The same would be true of batteries? A. Yes.

Q. And would the same be true of any of the accessories line? (4746) A. No, I couldn't take a dollar figure and give you a unit deal on accessories.

Q. Well, not a unit deal, but could you estimate the

approximate wholesale value? A. I think so, yes.

Q. That would be true of tires, batteries and accessories? A. I think so, yes.

Q. You mentioned that you sell to every Texaco station that you possibly can, and also you mentioned that—getting over here to these percentages of 75% of accessories, and non-sponsored—and 40% of overall TBA non-sponsored— A. That's right.

Q. What do you consider the non-sponsored product to be? Would Goodrich be, as far as you are concerned, a non-sponsored product? A. Well, yes, it would be, to

answer your question.

Q. As far as Firestone is concerned Goodrich is a non-sponsored product? A. They all are as far as I'm concerned.

Q. Now, if you will, please, will you tell us exactly what your duties are in your current position—and as I understand it, you've been in your current position for two and a half years, is that correct? A. That's correct.

Q. Will you tell us what your duties are in that position? (4747) A. Well, with regard to what we're talking about

here, or just in general?

Q. Well, in general, and certainly insofar as they touch upon sales of TBA. A. Well, my primary responsibility is the supervision of the sixteen company stores and five retail

shops in the Omaha district. I am directly responsible for the overall operation.

Q. Of the Qmaha stores? A. That's right.

- Q. And that's been true since—I didn't mean Omaha stores, I meant the Firestone stores in your area. A. That's right.
  - Q. And that's been true since— A. About May 1 of '56.

Q. May, '56? A. Yes.

- Q. All right. Now, during that period what would be the reason for your visiting stations? A. Well, for the reason I'm also responsible for the supply point stores, of which we have several in the Omaha district; and certainly I supervise overall operations, and the petroleum TBA business represents a big potential. And I talk to our salesmen, and make calls with our salesmen, and try and get as much of that business as we can, naturally.
- Q. And how many such stores are there in Omaha and in Lincoln? (4748) A. Well, in Omaha we have primarily the 20th and Harney store set up as our supply point store. Our South Omaha store does serve a few.

In Lincoln we have the one big store that handles our

supply point, or our TBA oil company dealers.

Q. You have no independent distributors handling designated supply points of Firestone? A. We do have. However, I don't work with them. I mean, that's out of the scope of my job.

Q. Are they located in Omaha? Are there such stores as distributors in Omaha and Lincoln? A. Not of any

size to speak of.

Q. Well are there any! A. Yes, sir, there are.

Q. How many? A. Oh, I don't know. There's a couple, two or three, I think. But they're immaterial.

Q. And the Texas Company stations obtain their Firestone TBA supplies from those sources? A. No. The Texaco stations are all served by the Firestone Company

through stores, or on a direct basis, as I told you pre-

Q. I see. Now, how often in your present capacity do you actually visit stations? A. Oh, it will vary from maybe a couple of times a month to— (4749). in some of the outlying areas to maybe once a year.

Q. And do you cover every Texaco station in Omaha and Lincoln, and your entire area for which you are responsible, that often? A. In a period of a year I make the

rounds, yes.

Q: In the period of a year you would see each station how often approximately! A. Well, as I said, in Omaha I would see them much more frequently, and in Lincoln, because those are big areas where I spend most of my time.

Q. But how often is More Frequently? A. I'd say on

an average of once a month probably.

Q. You go to each station once a month, is that correct?

A. Approximately. I couldn't tell you exactly.

Q. Well, approximately how many are there? A. Well, there are somewhere in the neighborhood of thirty stations, thirty-five.

Q. And what do you do when you visit the stations?

A. There is only one purpose I have in mind, that's selling

merchandise.

- Q. Well, do the stores, the Firestone stores, maintain a corps of salesmen to call on these Texaco stations? A. Sure.
- Q. How many salesmen for example do you have in the Harney store! (4750) A. Well, we have two that's directly pinned down to what we call dealer sales, and we have two others that call on dealers, plus the store manager. Actually about five people that in the course of their duties would call on dealers.
- Q. And during the course of a year you'd go around with each of those visiting various stations, is that— A.

Well, there's actually two of them I work with that do the handle the Texas accounts.

Q. Then at least once a month you go out with one or both of them and cover all the stations? A. I don't have to go out with the dealer—or, the salesman, because I was in the store for about two years and I know a lot of dealers personally and have had them in my home—and sometimes I get a tank of gas—and we have to sell all the time, and we do a little selling then.

Q. My point is, how often do you personally, physically go into each and every store, each and every Texaco station, in Omaha? A. About once—as I told you, about once a month. But it would necessarily be with a salesman.

Q. You might go in there independently? A. That's right.

Q. So that each and every station is visited every year by you at least twelve times, is that correct? A. In the confines, more or less, of the Omalia and Lincoln (4751) area, yes.

(4752), Q. Now, as manager of the Harney and South Omaha stores, did you have occasion to go out and visit the stations there? A. Oh, that was one of my biggest jobs.

Q. That was your primary job, was it? A. That's right.

Q. And the last time you were operating in that capacity was May of '56' A. Well, April 30 of '56.

Q. And how often did you call on the stations then?

A. Oh, gee, some of those dealers—I don't think I ever got into any of them more than once a week—but some of them I averaged once a week.

Q. Now, these stations that you visit with the these (4753) stations, Texaco stations, that you visit with the Texaco personnel, how often do you do that? A. Not very often.

Q. And who in the Texas Company, or what class of personnel; would that be? A. Why, I've made calls with —there's not many, as I said, but most of them were through salesmen. I made calls with some of their people, other people, however.

Q. Such as? A. Oh, Spike Burgees.

Q. What is his title? A. Well, at that time he was—I really don't know specifically his title. State manager, or something like that.

Q. Well, what was the purpose of the visit? A. Well,

to sell merchandise. That's all I'm interested in.

Q. Well, were you introducing Mr. Burgess, or was he introducing you to these various—. A. In most cases it's —a lot of times for the purpose of introduction. It may be for the purpose of planning a promotion. They are basically all from the standpoint of either selling to or selling for the dealer merchandise, and if we get the dealer selling it, why, it's no problem for us to sell it.

Q. Now, was it on those occasions that you heard Texaco dealers boast of their independence, as you testified

before? (4754) A. There, and at other times.

Q. Now, how did that come about that they boasted of their independence? A. Well, I mean, if you try to sell them something and they can say, "Well, I got a better deal from somebody else, I don't have to buy from you—"—and they didn't buy.

Q. And that is what you consider boasting? A. Pes. And the fact that they bought proved it to me.

Q. And that was in the presence of Mr. Burgess, was it? A. Yes, sir.

Q. All right. Now, can you name one or two dealers' that operate in that fashion in your presence? A. Oh, yes. I can name several.

Q. All right. A. Tom Acamo is a good example. Tony Bonacci, he's really independent, if that's what you want

to call it. Cecil Baird, Clarence Carroll, Bob Shell—there's—well, all of them are, I couldn't just say that just one or two were independent. I'd say they all were.

Q. Now, specifically, when did Mr. Acamo tell you that he wouldn't buy and didn't have to buy in the presence of Mr. Burgess? A. You mean the date?

Q. The date, yes. A. I can't give it to you.

(4755) Q. Well, month, year—roughly. A. You mean the month or the year? Is that what you mean?

Q. What year? A. I don't know. It's been—it's been

a year ago, maybe.

Q. And roughly when? You mean about a year ago—A. It was this time of the year.

Q. July of 57? A. I'm trusting my memory.

Q. And what in particular was involved, do you recall?

A. We were trying to sell him a seat cushion deal.

Q. Is that the only thing? A. At that particular time,

that's right.

Q. All right. Now, what about Mr. Bonacci? A. Well, I didn't call on Mr. Bonacci with Mr. Burgess, if that's what you're asking.

Q. Yes. A. No, I didn't. I didn't call on him.

Q. How about Mr. Baird? A. I didn't call on him. I didn't make many calls with Mr. Burgess.

Q. That same is true of Carroll, is it? A. That's right. Most of the time, why, it was we fellows out there fighting with competition try to get business. We didn't do too well.

Q. Now, I believe you stated that in your opinion 50% of the (4756) Texaco stations have non-sponsored TBA, is that correct? A. Well, I think I said that was with tires and batteries, and even more on accessories.

Q. Well, yes, but—you've got three percentage figures fiere that I'm trying to arrive at for your basis. In other words, first you said there is about 50% of the Texaco

stations have non-spon ored TBA, or tires and batteries?

A. Tires and batteries, that's right.

Q. Then you said that in your opinion 75% of the accessories is non-sponsored, is that correct? A. That's right.

Q. And 40% of all TBA is—and that I wasn't clear on—non-sponsored, or— A. Yes.

Q. That was non-sponsored? A. Yes.

- Q. All right. Now, how do you arrive at those percentages? Let's start with your opinion in regard to the 50% of Texaco stations having non-sponsored tires and batteries. A. Well, you see, to start with, as I told you, I work with salesmen, supervise them, and the only thing I'm concerned about is the non-sponsored, which to me is competitive merchandise. Because if we're selling the Firestone, why, that doesn't concern me. I'm after the business that we're not getting. So for that reason, that's all I look for, is the (4757) competitive merchandise, as we call it. And to a swer—what was your question again?
- Q. Well, the question was, how do you arrive at your opinion that 50% of the Texaco stations have non-sponsored tires and batteries. A. Well, I check them, as I said, getting into them and finding out what our salesmen are getting.
- Q. Now, those 50% have non-sponsored tires and batteries. Does that mean that 50% of the Texaco stations carry non-sponsored tires and batteries exclusively! Is that you— A. No.
- Q. Of these 50% do they carry—do some or all of them carry some Firestone? A. Say that just once more.

Mr. Dias: Will you read that back! (Question read.)

A. I'd say so.

Q. And would you say that— A. I would say not all. I would say some, that's the way I'd answer it.

Q. Well, as to those who are carrying some sponsored Firestone tires and batteries, would you say that they are carrying a good number of Firestone tires and batteries? A. I would say so.

Q. All these stations that you visited that have Firestone (4758) tires and batteries, and so on, do they have Firestone valances and curb signs, in other words, Firestone advertising, about the station? A. Some of them do. Some of them we think should have more, but they don't want it, so we don't put it up.

Q. Well, didn't—you were here yesterday, were you not? A. Yes, I was.

Q. Didn't one of the witnesses state he had a fight about this advertising material? A. Well, sometimes, I'm sorry to say, we have trouble getting it, and some of the dealers like to use our valances because they know that it will help pull business into their stations. But that shouldn't be the case. We were at fault there.

Q. All right. Now, as to the 75% figure—well, first of all, you stated that 100% of the stations, the Texas Company stations, have non-sponsored accessories? A. That's true.

Q. Is it your testimony that those stations have no Firestone TBA? A. No.

Q. I'm sorry-no Firestone accessories. A. No.

Q. Is it your statement then that all Firestone stations have at least some non-sponsored accessories? A. No.

(4759) Q. Is it your—what do you mean by that? A. Well, I mean that there's some Firestone stations that carry none of our accessories. In other words, they just don't carry any.

Q. All right. Then we get down to the 75% figure. Is that then—do you derive your 75% figure, that 75% of the accessories in Texaco stations are non-sponsored— A. That's right. They're competitive.

Q. Now, you mean that 75% of the Texaco stations carry non-sponsored accessories, or do you mean that as to each station, about 75% of their accessories are non-sponsored? A. Well, what I had in mind was that 75% of the accessories sales made to Texas service stations were non-sponsored. And I think that's conservative.

Q. But you do sell some Firestone accessories to all-

most of the stations? A. Most. Not all.

Q. And on this overall TBA, the 40% figure, how do you arrive at that estimate? A. Well, as I said, by getting into the stations and looking at their stock.

Q. But you claim there were—what, about 30 Texaco

stations, in the area? A. That's right.

Q. Now, of the 30 do you—is it your testimony that 40% of (4760) the 30 carry your Firestone TBA in general, or is it your testimony that 40% of the TBA that goes through those 30 stations is Firestone TBA? A. No, I—it was my testimony that 40% of the TBA sold those dealers was non-sponsored, of the total TBA.

Q. Of the total TBA 40% is non-sponsored? A. That's

right.

Q. You mentioned various ways that Texaco assists Firestone. Texaco also notifies you, I mean Firestone, when new stations are opening up or dealers are changing, do they not? A. Not necessarily. They should. But we try to find out a lot of times before they ever get to us, because if you can get close to those guys, it's better off to you to sell them. You can get them buttoned up before competition does. Why, you get more business that way.

Q. Yes. Now, in those instances where you do get the information? Do you see them at the time, or before they

open their stations? A. We try to.

Q. And that's the ideal time to catch them? A. Yes, that's right.

Q. Now, are there some instances where you, the Firestone representative, learn the identity of new—of the new operator of a new station, even before Texaco? A. That's right.

(4761) Q. And you close your transaction with them on that of your own without any help from Texaco? A. Oh, yes. We don't always have Texas Company help in

closing the deal. That's right.

Q. Does Texaco then get a commission on the sales that you make in those instances? A. I don't know. I guess they do. I don't know.

## (4762) By Mr. Dias:

- Q. Did you state in connection with one of the Texaco operators that it was normal to carry the filters in the back room? A. Yes, sir.
- Q. Where is the back room, as you understand it, in the service station? A. It is a stock room more or less that they keep merchandise in which normally is displayed in the regular office, if that is what you want to call it, of the station.

#### Q. I see.

I show you a picture of Mr. O'Brien's station, Respondent's Exhibit 19. Would you call that the back room of the station? A. No, not necessarily. I had specific reference to what is back behind the office, it was back off the service bay; this is in the service bay.

Q. And in the service bay is the proper place or the usual place to carry filters, is that correct? A. No, in the back stock room, because, as I said, it is not an item that is sold on impulse. You have to sell an oil filter, so for that reason there is no use having them out where people see them.

Q. Now during the time that Acamo was buying tubes (4763) from—Weiner, I believe it was? A. Weiner.

- Q.—and other items from other suppliers, other supply sources, how did you know that? A. We saw them in stock in his station.
- Q. Were you personally calling on him at that time?

  A. That is right, and he has always bought a lot of stuff like that, you see.

Q. I think you stated that Mr. —Schulte, was it? A. Right.

Q. Or Schultz? A. Schulte, that is right.

Q. Mr. Schult doesn't stock Firestone tires at all, he bought them on a pick up basis? A. That is the way he was with everybody.

Q. That includes the Century tire? A. That is right.

Q. So on that basis the chances are he buys them and puts them on the car immediately, isn't that so? A. Generally speaking, yes.

Q. That is, within a day or two? A. Yes, that is right. That is the way he generally operates. He just doesn't

do much stocking of anything.

Q. When you visited these various stations, did (4764) you inform them you were coming or did they know you were coming? A. Not necessarily, no.

Q. Do any of your Firestone stores handle Texaco products? A. Yes.

Q. Which ones?

Mr. Royall: What was the question?

Mr. Dias: I asked him if Firestone stores handle Texaco products.

#### By Mr. Dias:

- Q. Which ones? A. Omaha.
- Q. Is that the 20th Street? A. Yes.

# M. A. Bunte, for Respondents—Redirect Norman L. Jacobson, for Respondents—Direct

Q. 20th and Harney? A. That is right.
And Lincoln does.

Q. Lincoln? A. We have several of them in Lincoln, together with other companies.

Q. They have pumps, have they? A. That is right.

Mr. Dias: I believe that is all.

## (4765) Redirect examination by Mr. Royall:

Q. I have a couple of questions, Mr. Buntz. In Omaha and Lincoln, your territory, you are a great deal more successful in selling tires, Goodrich's, are you not? A. Yes, sir.

Q. You were asked about the Firestone name being on certain Firestone products and others not carrying the name. Does that make any difference at all in the matter of commission?

It is a Firestone product and the commission is paid?

A. To my knowledge, yes.

Q. Whether the name is on it or not? A. It makes no difference.

(4756) NORMAN L. JACOBSON was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

## Direct examination by Mr. Lorenzen:

Q. Would you give your full name, Mr. Jacobson? . A. Norman L. Jacobson.

Q. Where do you live? A. 10217 St. Lawrence.

Q. What business are you in? A. I run a Texaco service station at 119th and Western, Blue Island, Illinois.

Q. You have a lease, do you, for that station? A. Yes, sir.

Q. One of those leases that renews itself each year?

A. Yes, sir.

Q. How long have you been there? A. I have been

there almost five years now.

Q. Can you tell us about what is the gasoline gallonage of your station? A. Right now I am selling about 29,000 gallons per (4767) month.

Q. That is doing better than it did when you went into

it! A. Yes, sir.

Q. Do you handle any TBA in that station? A. Yes,

sir, a complete line.

Q. Will you tell us the reason for handling TBA? A. The reason for handling TBA is to create more business to get people to come in the station so I can handle them and take care of them.

Q. Do you think it helps you attract customers for the

sale of gasoline? A. Yes, sir, very much so.

Q. Do you make money on the TBA items? A. Just 40 per cent, sir.

Q. So in your case you have got a good mark-up? A.

Yes, sir.

Q. And it is a profitable business? A. Yes, sir.

Q. Did you have any conversation with the zone manager of the Texas Company at the time when you obtained your lease for that station? A. Yes, sir, I talked to Mr. Knight for quite a bit.

Q. Mr. who? (4768) A. Mr. Knight.

Q. That is Donald Knight? A. Yes, sir.

Q. At the time when you were signing the lease, was there any discussion about TBA! A. Yes, sir, there was a discussion about TBA. Mr. Knight said he would like me to handle B. F. Goodrich if it is possible, but I could make my own choice as far as TBA is concerned, so I

could make out the best with my customers. It was an old established station that handled B. F. Goodrich products, so I continued the B. F. Goodrich products line.

Q. Was anything said about Firestone? A. No, sir.

Q. Was anything said about your handling Goodrich because it was a neighborhood station and the customers had gotten used to Goodrich? A. Yes, sir, because when I took over it was established for a year before I bought it, and it was a B. F. Goodrich station.

(4769) Q. You stated that Mr. Knight told you that in spite of his recommendation, you could choose whatever you want, choose whatever TBA you wanted? A. Yes, sir.

Q. Has anybody employed by the Texas Company at any time since that conversation told you that Mr. Knight didn't mean what he said? A. No. sir.

Q. Did anybody tell you that you had to handle B. F. Goodrich or the Firestone line of TBA? A. No, sir.

Q. Did anyone tell you that your lease would be canceled or wouldn't be renewed if you didn't handle the Firestone or the Goodrich line! A. No, sir.

Q. Did they say they would treat you badly in some other way if you didn't stick to Goodrich! A. No, sir,

Q. Nothing like that has happened to you? A. No, sir. (4770) Q. Now tell me from whom do you buy your TBA items? A. I have three sources of supply that I buy TBA from. One is Kenrose Automotive at 111th Street; Capital Auto Parts; and J&E Auto Parts.

Q. Now this Kenrose dealer handles Goodrich, the Goodrich line, does he? A. Yes, sir, he handles the Goodrich line but he also handles Firestone, Delco, Auto-Lite and other products, too.

Q. In addition to buying Goodrich products from him, do you buy a good number of items which are not in the Goodrich line? A. Yes, sir.

Q. You know that on those the Texas Company doesn't get any credit? A. I don't think so.

Q. Now also among the things you buy from him are some anti-freeze? A. I buy Prestone, Zerex and Zerone from him.

Q. And those are not in the Goodrich line? A. No, sir.

Q. In addition to Goodrich batteries, what kind of batteries do you buy from him? A. I buy Auto-Lite and Delco-Remy batteries also.

Q. What kind of fan belts do you buy from him? (4771) A. I buy a complete line of fan belts. I formerly had B. F. Goodrich in there but I had them all taken out and I had Gates put in about three and a half years ago.

Q. When you made that change did the Texaco salesman threaten you or in any way tell you that it would be displeased, that the company would be displeased with you if you didn't stick to the Goodrich? A. No, sir.

Q. Nothing like that happened? A. No, sir.

Mr. Dias: I object to that, your Honor, as leading. These are long questions which are leading, in effect, and I suggest that the witness testify. He can be asked what if anything was said:

Mr. Lorenzen: We have to negative specifically

the inference that was-

Hearing Examiner Kolb: We have a negative, I think, and it is shortening the examination to some extent without particularly leading the witness.

## By Mr. Lorencen:

- Q. How about filters? A. I handle three types of filters right now. I (4772) have got A-C, Brahm, and I have Atlas.
- Q. So that part of your filters are in the Goodrich line and part are not? A. That is right.

Q. How about radiator hose? A. All of them are Gates.

Q. How about spark plugs? A. I handle all types of spark plugs. I have got Anto-Lite, A-C, and Chadwins.

Q. So that again part of them are in the Goodrich line

and part are not? A. That is right, yes, sir.

Q. How about thermostats? A. I handle Dahl thermostats.

'Q. And those are not in the Goodrich line? A. No, sir.

- Q. How about waxes and polishes? A. I handle every kind of wax there is, almost. I have got about thirty-five different kinds.
- Q. And the same is true of additives and chemicals?

  A. Yes, sir, I have all different types.

Q. Now you handle Goodrich tires? A. Yes, sir.

Q. Do you also handle other kinds of tires? A. I will handle any type of tire I can make a buck (4773) on. I have been selling Firestone, Goodyear, and I have sold some U. S. Boyal.

Q. How about mufflers and tail pipes, do you handle any of those? A. I handle them.

Q. Shock absorbers? A. Yes, I do.

Q. What kind do you sell? A. Air mufflers and McCord tail pipe mufflers, and Monroe shocks.

Q. They are not in the Firestone line or the Goodrich line? A. I don't think so. I don't believe they are.

Q. You say you handle any kind of a tire you can make a buck on. Do you buy other makes of tires than Goodrich? A. Oh, yes, I buy Firestones, and I bought, when they had sales on them, Goodyear tires. I made some adjustments on U. S. Royals, and where a customer come in with a bad tire, I take the old tire and give him some adjustment and go to U. S. Royal and get a U. S. Royal tire which is on sale and put those in stock.

Q. You out them in stock where they are openly visible,

anybody can see them? A. That is right.

(4774) Q. Does that apply to all of your TBA? A. Yes, sir, all of my stock.

Q. Do you hide any of it? At No, sir.

Q. Have you ever been told by your Texas Company

representative to hide any TBA? A. No, sir, never.

Q. Or that the Texas Company would cancel your lease or otherwise treat you badly if you didn't hide it? A. No, sir, they never said that.

Q. Or throw it out of the station? A. No, sir.

Q. Now in addition to Kenrose, you have bought some Goodyear tires from South Side Tire, did you say? A. Yes, sir.

Q. And you buy some TBA, you say, from Capital Auto

Parts? A. Yes, sir.

Q. What do you buy from them? A. I buy some thermostats and filters. I have a complete line of Niehoff equipment for ignitions, I have about \$500 worth, and they completely supply that, Niehoff.

Q. How about C-K Auto Parts? A. I buy brakes, shock absorbers, rebuilt generators, (4775) things like

that off of them.

Q. Do you buy any additives and chemicals from them?

A. Very few.

Q. How about any wagon peddlers, do you patronize those at all? A. Yes, I do. I patronize one called C. V. Sales. Every Friday he comes around and I buy about \$30 worth a week of additives, different additives.

Mr. Dias: I didn't hear what you buy from him?
The Witness: Additives.

## By Mr. Lorensen:

Q. Now you say you buy from J&E. What do you buy from them? A. I buy additives, thermostats, Kool-Vent seat covers and brake fluid, whatever they have a buy on.

Po

They come around and it is about \$30 a week I spend

with that company.

Q. Tell me generally what makes up your mind in so far as selecting the TBA which you handle? A. I try to buy on a basis where I can get an extra discount on something so I can make a dollar with it, and it has got to be a nationally advertised product that they are having a special on or something of the sort.

(4776) Q. And has that been your general motivation.

in buying TBA? A. That is right.

Q. Has your choice been dictated or compelled in any way by representatives of the Texas Company? A. No, sir.

Q. I show you four pictures which have been marked as 42-A through D and ask you whether you recognize those as being pictures taken in your station? A. Yes, sir.

Q. Do you know approximately when those pictures were taken? A. Well, the large picture was taken sometime I think in February and the other ones were taken about a month ago.

Q. Who took them? A. A representative of the Texas

Company.

Q. Did you know he was taking them? (4777) A. Yes, sir, I did.

Q. Did you do anything to alter your station or change

it from the way it normally looked? A. No, sir.

Q. Is that the way your station looks and has looked in general for the past—I don't know whether it is years, but I suppose you do change your display? A. No, it has looked like that for three years now.

Q. It has looked substantially like that? A. That is

right.

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(4778) Q. Those pictures show some of the merchandise about which I have asked you, the Gates fan belts on the Gates' racks, and is that Auto-Lite batteries? A. Yes, sir.

Q. By the way, do you have two sets of these Gates' racks, one on each side? A. One on each side of the grease rack.

Q. One on each side of the grease rack. So that these pictures are not duplicates, they are taken one on each.

side! A. That is right.

Q. Taking all of your TBA together, and now I am talking about tires and batteries and the type of accessories we have been talking about, not repair parts, try to put out of your mind these ignition parts and clutches or carburetors, things like that, and just kind of think of the other TBA items, tell me about what per cent of your total TBA you think is in tires and tubes? A. I would say about 25 per cent.

(4779) Q. What part of that same business do you think is in batteries? A. Close to 25 per cent. Maybe it wouldn't be that. Yes, it would be that high, about 25

per cent.

Q. I think I dare add that one up, that is 50 per cent?
A. Yes.

Q. And the balance, the other 50 per cent, then, would be in what we call accessories? A. Yes.

Q. Could you estimate about what part of your total TBA sales are in the Goodrich line? A. It can't be more than 40 per cent.

Mr. Dias: I am sorry, I didn't hear that.

The Witness: About 40 per cent, it can't be more than that.

#### By Mr. Lorenzen:

Q. You say you didn't think it was more than 40 per cent? A. No, no more than 40 per cent.

Q. Will you state whether you get any help in merchandising your TBA from the Texas Company? A. Yes, I do. He comes out and helps me with displays and things like that around the station. He brings out signs, posters, and everything like that to (4780) help me to display and sell my merchandise for advertising.

Q. Do you attend any dealers' meetings? A. Yes, sir, I attend them all.

Q. Do you find that you get any help out of those?

A. Yes, sir, I think they are very helpful.

Q. In connection with TBA merchandise? A. That is right, sir.

Q. Do the representatives refuse to help you in connection with the TBA that is your business outside of the Goodrich line? A. No, they have never refused me yet, sir. They have always been helpful to me in every way.

Q. You find that they help you and that the help you get from the Texas Company applies to all of your TBA?

A. That is right.

Q. Is your station known as Bob & Norm's? A. Yes, sir.

Q. Who does the buying of the TBA for your station?
A. I do all of it, sir.

Q. Do you recall whether Mr. Joseph C. Arey, a salesman for the South Tire Service, was ever in your shop? A. Yes, sir, he was in there.

Q. Do you remember that he was in there talking to (4781) you? A. Yes, sir.

Q. And talking to your partner Mr. Schultz? A. Yes, sir.

Q. Now while Mr. Arey was ever in there, was he ever told that you wouldn't dare buy or display Goodyear tires?

A. That was never said in our station, sir, never stated.

Q. At the time when Mr. Arey was in there, do you know whether there were on display tires other than Good-

rich! A. Yes, sir.

Q. What were they? A. I had four Goodyear tires on display at the time because I had bought some previously from him to sell and he had been out to see me to ask me why I wasn't stocking more of them.

Q. You also bought Goodyear tires from him since

then? A. Yes, sir, I have after that time.

Q. Does anyone in the Berry Tire Company call on you, Mr. Jacobson? A. No, sir.

Q. Does anyone from the Shannon-Son Tire & Supply

(4782) Company call on you? A. No, sir.

Q. Does anybody from Jennings Auto Supply call on you? A. No, sir.

. Q. Does anybody from Motor & Axel Parts Service, Incorporated call on you? A. No, sir.

Q. Does anyone from Evanston Auto Company call on

you? A. No, sir.

- Q. Does that apply also to its affiliated company, the Lake County Auto Company? A. I don't know them, sir, and no one calls.
  - Q. No one from those places calls on you? A. No, sir.
- Q. Now does someone from J&E Auto Supply call on you! A. Yes, he calls every week and I buy every week, too.

Q. And that is one of your other substantial sources of TBA as you testified? A. Yes, sir.

Q. You have also testified that as to South Tire Service, you have bought from him and you are still doing it when you want Goodyear tires? (4783) A. Yes, sir.

Q. When you said that some of the things that were helpful to you as the furnishing to you of signs and posters by the Texas Company, you didn't mean that the Texas Company furnished you Firestone signs and Goodrich signs? A. No, sir.

Q. You get those from Firestone and Goodrich, do you

not? A. That is right.

Q. Have you had any difficulty in getting decals? A. Yes, sir, decals that you put on the window, I had to wait, I think, six months. Six months I waited for them to be put on the last time when I had them on about two years ago, and I have been trying to get them now again to replace them because they are all getting raggedy and cracked and peeled. It is a hard job to get ahold of those decal signs and put them back on windows.

Q. You are the one who asked for them? A. Yes, sir.

#### Cross-examination by Mr. Dias:

Q. Do you know the date, Mr. Jacobson, that Mr. (4784) Arey was in your station? A. No, sir.

Q. That is, that you testified to before? A. No, sir.

Q. That conversation was mentioned before, you don't know when that took place or allegedly took place? A. I never heard it take place in my place of business. Mr. Arey was in there three or four times to see me.

Q. When was that, do you recall? A. At different times. The first time that Mr. Arey ever heard of me, I called him on the phone and asked him to deliver some

Goodyear tires. Then he come out to make calls.

Q. Do you recall when that was? A. No I don't, sir.

Q. During these dealers' meetings that you attend, who all are present, are they all of the local dealers? A. All of the local dealers and sales representatives and the guest speaker.

Q. The sales representative from what company? A. The Texas Corporation.

Q. Who are the guest speakers? Who are the typical guest speakers? A. Different men that know something about oil and (4785) additives, and so forth.

Q. Do you have any representatives from Goodrich or

Firestone? A. Yes, sir.

Q. Do they discuss TBA? A. Yes, sir.

- Q. You mentioned that no salesman from Berry or Shannon-Son and several others called on you. Are you in their sales territory, do you know? A. I don't think so.
- Q. As a matter of fact, you are out quite a ways, aren't you? A. Yes, I am out in Blue Island.

Q. Where? A. Blue Island.

Q. Those pictures, as I recall, Respondent's Exhibits 42-A to D, do not show any Goodrich merchandise or advertising in and about the station. You have such advertising, do you not? A. Just on the outside of the windows, and there is a sign out along the fence.

Q. Along the fence? A. Yes.

Q. Can you give us some idea of the size of that Goodrich sign! (4786) A. Three by one foot.

Q. Three foot by one foot? A. That is right.

- Q. Do you have, even if it is torn, a sign in your window? You do, do you not, a Goodrich sign? A. I have decals.
- Q. I notice, too, that you use the charge system. You have Texaco's credit system, do you? A. Yes, sir.
- Q. Do you charge these non-sponsored items? A. Yes, sir.
- Q. Do you specify that they are non-sponsored? A. No, sir.
- Q. Up until the time that they put in the charga-plate, I suppose you call it, was it necessary to indicate on the slip the type of merchandise that was sold? A. It was on

the deferred payment plan, I think, sir, but not on the regular cards, if I am not mistaken.

Q. We will talk first about the regular cards. A. No, the regular cards, I don't think it was on accessories or whatever I would sell, I would put the type of item.

Q. And you didn't specify the brand name of the item?

(4787) A. No, sir.

Q. Was there any reason for that? A. No, sir.

- Q. The card itself is limited to Goodrich and Firestone, is it not? A. I wouldn't know for sure.
- Q. You don't know what the products are limited to on the credit? A. No.
- Q. I believe you said that you make about 40 per cent on your TBA. Is that the average mark-up on tires, batteries, and accessories? A. No, sir, that is the average mark-up on the TBA outside of tires, batteries, and tubes, and things like that; that is on your merchandise.
- (4789) Q. When we say TBA, we mean tires, batteries and accessories, the full business. Now what do you make on tires, batteries and accessories? If it varies by each of those categories, say that, and then we will continue. A. It varies by each of the categories. 15 per cent on tires, maybe, and 15 or 20 per cent on batteries, but you make 40 per cent on merchandise, merchandise specifically.

Q. I see, and that would be accessories of various types? A. That is right.

Q. And that includes filters, does it, and all accessories?

A. That is right.

Q. Do you carry a stock of Goodrich tires? A. Yes, sir. Q. What do you consider a stock? A. I have about 22 to 25 tires.

(4790) Q. How big are your racks? A. I have one rack which carries 12 tires and two more that carry five

and I have racks inside the building that will carry as high as 20 tires.

Q. What other brands of tires do you carry a full stock

of? A. I have been carrying Firestone also.

Q. In other words, you carry a full stock of Firestone tires and a full stock of Goodrich tires! A. It is up and down, the stock is up and down. You never stock a double amount of everything. You stock one at one time and when you got a price on Firestone you get a price on Goodyear or you get a price on U. S. Royal, you will buy them.

Q. I think I understand, but what I am trying to determine is when you maintain a basic stock in your station, what items do you have in the tire line, what brand! A. My basic stock would be of B. F. Goodrich.

Q. B. F. Goodrich A. That is right.

Q. Do you at other times carry a full stock of Firestone? A. Once in a while, yes.

Q. Do you ever carry a full stock of Dunlops! (4791)

A. I never bought any Dunlops in my life.

Q. Century! A. No, sir.

Q. Cooper? A. No, sir.

Q. Do you have any idea of your present inventory in tires, batteries and accessories? A. It would be about \$5,000.

Q. \$5,000? A. Wait a minute, no, that is for everything

in the station.

Q. I mean everything that can be sold such as tires, batteries and accessories. A. That is right, sure, it must be close to four or five thousand dollars.

Q. Can you estimate how much of that is Goodrich

dollar-wise? A. It would be maybe about \$1500.

Q. \$15001, A. Yes, sir.

Q. You stated that you purchased from various peddlers, wagon peddlers, is that correct? A. Yes, sir.

Q. How many of those call on you? A. I only have one calling on me right now.

(4792) . Q. In addition to that one, I missed some of these names. You have Kenrose, and Kenrose is the Goodrich man, is that right? A. I don't know if he is the Goodrich man or not, but he handles Goodrich. He also handles Delco-Remy, Auto-Lite and other stocks.

Q. And then you have Capital? A. That is right.

Q. And J&E? A. That is right.

Q. There were a couple of others in there, were there not? Who else do you deal with? A. That is my main three, the main three suppliers, Kenrose, Capital, and J&E. Then there is this here—

Q. This wagon peddler? A. This wagon peddler, yes.

Q. Did you say something about C-K† A. C-K Motors, yes, he is parts mostly.

Q. Do you buy any Goodrich batteries? A. Yes, sir. (4793) Q. Do you stock Goodrich batteries and these Auto-Lites that you mentioned? A. Yes, sir.

## Redirect examination by Mr. Lorenzen:

Q. And whichever one of these jobbers testified that they did business on the south side of Chicago, that would include Blue Island, wouldn't it? A. Yes, sir, because I am right across the street from Chicago.

Mr. Dias: What?

The Witness: I am across the street from Chicago.

Mr. Lorenzen: He is right on the city line.

Mr. Dias: I see. All right.

#### By Mr. Lorenzen:

Q. Now Mr. Dias asked you about some Goodrich signs (4794) that you had there. Do you find those helpful in attracting business? A. Yes, sir, they are very helpful.

Q. Is that the basis for your having Goodrich supply you with them? A. Yes. I only had a sign on one side and I asked them to put it on the front side so I would catch them both ways, 119th Street, and also on Western Avenue, so they would know I was a stocking dealer, too.

Q. Will you tell us why you don't stock these tires which Mr. Dias mentioned to you, Dunlop, Century, and Cooper? A. I think Goodrich is a better tire, more acceptable to the people because it is a nationally advertised product and it is easier for me to make adjustments on a tire like that.

Q. Now with respect to your charge card, I mean this charge that Mr. Dias was asking you about or discussing with you, as I understand you, you don't specify by name any part or product? A. No, sir.

Q. And that applies to whether it is Goodrich or any-

thing else? A. That is right.

(4795) ROSS RITTENHOUSE was thereupon called as a witness for the Respondent, and, having been first duly sworn, testified as follows:

#### Direct examination by Mr. Lorenzen:

- Q. Will you give your name to the reporter? A. Ross Rittenhouse, R-i-t-t-e-n-h-o-u-s-e.
  - Q. Where do you live? A. 2314 Gideon, Zion, Illinois,
- Q. Will you tell us what your business is? A. I am in the Texaco service station business.
- Q. Where is your station located? A. 29th and Sheridan Road, Zion.

- Q. Do you have a lease from the Texas Company? A. Yes.
- Q. Is it one of these leases that renews itself at the end of each year? A. Yes, that is right.
- Q. How long have you been a lessee at this station?

  A. Nine year the first day of September this year.
  - Q. Do you handle TBA? (4796) A. Yes.
- Q. Do you find it helpful in your business? A. Yes, it is very helpful in my business.
- Q. Both from the point of view of making money in TBA and selling gasoline? A. Yes, and it attributes quite a little to it.
- Q. During the time you have been a lessee dealer, have you bought your TBA from whatever source you thought was the best business for you? A. Yes, I have handled Firestone and I have handled three other brands of tires, and most any type of accessory, anything that I wish to buy.
- Q. Have you understood that that was in accordance with the Texas Company's TBA policy! A. Well, I have never heard anything contrary to that. When I went into business, Mr. Paulsen, the previous owner, explained everything to me. The salesman was going on a vacation and he introduced me and he was leaving right away on a vacation, and Mr. Paulsen give me all the set-up and his estimation was that we could buy wherever we wanted. himself was in the Firestone business, he was handling Firestone, and he said that it had very good acceptance, he had good luck with it, and the station was stocked with that when I bought it, so I had never heard anything contrary to (4797) that. I had good luck with it, I staved with it until I found that I could get a better price and then I switched to Cooper, Armstrong, and Pennsylvania tires in the tire line, and I found that they didn't sell very well. I got a better price but I had to cut my

price accordingly and consequently made approximately the same profit, but I was selling less tires, and didn't have the acceptance of the public.

Q. So then did you change? Did there come a time when you changed back to Firestone? A. I did change back to Firestone. They naturally were curious why I was handling them.

Q. Can you speak up just a little bit more? A. Yes.

They asked me and I said, "Well, I am getting a better buying price, I am buying cheaper from these other sources." So I quoted the prices I was buying from the other sources and the salesman, Paul O'Neill, said that he would try to see if Firestone wouldn't help me out toward that line, and it wasn't long until they came along with a better price and it was comparative to the price of the cheaper brand of tire, and my buying price was better, so I switched back to Firestone which I have had good luck with.

Q. During the time when you were handling these (4798) Cooper and Pennsylvania and Armstrong tires, did anyone from the Texas Company threaten you with cancellation of your lease? A. No, none whatsoever.

Q. Did anyone suggest that you would be treated badly in some other way if you didn't stop handling these Cooper and Pennsylvania and Armstrong tires? A. No, sir.

Q. Was the choice to go back to handling the better known Firestone tire your own choice or was it forced on you by the Texas Company! A. Well, it definitely was my own choice. I was persuaded by my own figures. When my sales had dropped off on my tires, naturally I knew I could sell just as many tires at a good price if I got the price from Firestone.

Q. Now you have also handled some batteries other than Firestone, haven't you? A. Yes, I have handled Bowers and I do pick up other batteries if I happen to

be out of batteries at the present time, I pick them up at local houses, local parts houses.

Q. Will you tell me in general from whom you buy your accessories for this station? A. Mainly Zion Auto Parts, Grand Automotive in Waukegan (4799) and some from Al Wenner's Texaco in Waukegan.

Q. Would you say that nearly all of your accessories other than the Firestone tires—we won't talk about those for the moment—are bought from Zion Auto Parts or Grand Automotive? A. Yes, mainly. That is my two largest supply points.

Q. Neither one of those is a Firestone or Goodrich supply point, is that correct? A. No, sir, neither one.

Q. Among other things that you buy from these houses are a complete line of Gates fan belts? A. I buy Gates from Grand Automotive.

Q. Do you display the Gates? A. Yes, we have a large display of Gates fan belts.

Q. What kind of radiator hoses do you have? A. We have Modak.

Q. That is not in the Firestone or Goodrich line, is it?

A. Not to my knowledge it isn't. I have never seen it.

Q. From whom do you get it? A. Zion Auto Parts.

Q. You buy Purolator filters? A. Yes, I buy Purolator filters from Zion Auto Parts.

Q. Are all of your TBA items, regardless of brand (4800) or where you get them, openly displayed? A. Yes, sir, everything is out in the open.

Q. And it is labeled, is it? A. Yes, sir, everything is labeled.

Q. Your Modak hoses are displayed on a Modak supply rack? A. Yes, they have racks and labels on each item, it is specified.

Q. Has anyone from the Texas company ever told you to hide or get any of these products out of your station?

A. No, none at all.

Q. This fellow Paulsen you said was the former owner? A. Yes, that is right.

Q. He was the man who had leased the station before

you did? A. That is right.

Q. He was the one who told you about the success he had with Firestone? A. Yes, that is right. They left everything up to him because the salesman was leaving town and O'Neill assured me that he would give me all of the information on everything, and then the final lease would be signed and settled with the office, of course.

Q. That is the Texas salesman just introduced you and (4801) left? A. He introduced me to Mr. Paulsen and left it up to him to tell me about the station and the run-

ning of it and all.

Q. And that is how you came to be a Texas lessee?

A. That is right.

- Q. Do you find that you get any help from the Texas Company in the merchandising of your TBA? A. Yes, we have had help. We had meetings, the salesman would even help me to the extent of cutting weeds and dusting shelves around. He was very helpful. Then they have meetings quite often.
- Q. You attend the sales meetings? A. I only missed one in nine years.

Q. Do you find those a help? Are they helpful in selling TBA? A. Very helpful. I wish they had more.

- Q. Does that apply to all of your TBA whether sponsored or non-sponsored? A. Yes, sir, all of the meetings seem to be on the order of helping us to make more money for ourselves and make us more successful dealers, and they don't specify how to do it.
- Q. So you use the tips which you get from those meetings in selling the sponsored TBA as well as the (4802) non-sponsored? A. That is right. I wish they had more of them

Q. Mr. Rittenhouse, you sell Haviland oil, do you? A. Yes, an awful lot of it.

Q. Do you feel you make more money on that than you do on other oil? A. Yes, I have handled other brands of oil and not handling any amount of it, we don't get a price on it.

Q. Mr. Rittenhouse, so you couldn't get as good a price on the Quaker State as you do on the Haviland? A. No, there is about \$2.00 difference in my buying (4803) price and it retails for the same price.

Q. So it is the fact, then, that you display your Haviland and you don't display your Quaker State? A. That is

right.

Q. And is that the reason for your failure to display the Quaker State? A. That is right.

Q. You are north of Chicago, are you? A. Yes, about 45 miles.

Q. Let me read you this list of dealers and ask you whether any of them call on you:

Evanston Auto Company and Lake County Auto Com-

pany? A. No, they don't.

- Q. Motor and Axel Parts Service, Incorporated A. No, sir.
  - Q. Jennings Auto Supply? A. No, sir.
  - Q. J&E Auto Supply Company, Inc. ? A. No.
  - Q. Shannon-Son Tire & Supply? A. No, sir.
  - Q. South Tire Service? A. No.
  - Q. Berry Tire Company? (4804) A. No.

## Ross Rittenhouse, for Respondents-Cross

## (4805) Cross examination by Mr. Dias:

- Q. You mentioned, as I recall it, a Mr. O'Neill. Is he a Texaco or a Firestone salesman? A. A Texaco representative.
- Q. Do I understand that you now carry Firestone tires (4806) and batteries? A. I use both products, yes.

Q. Do you buy any of their accessories? A. Very few

at the present time.

- Q. What is it that you buy from them? A. Just occasionally a seat cover or whatever item we know we are going to need. If we know we are going to need it and we are in the vicinity of the Firestone store, why we pick it up, seat covers, cool cushions, and various little accessories, rear view mirrors.
- Q. What about Al Wenner, what do you buy from him? A. He is the Firestone outlet or store. There is two of them in Waukegan and he happens to be one of them. He is a Firestone dealer.
- Q. Is that where you get your tires and batteries? A. I get some from him and some from Washington Tire & Battery.
  - Q. Who are they? A. They are also a Firestone outlet.
- Q. Where are they located? A. They are located in Waukegan also, they are both in Waukegan.

Q. When did you say you took over from Paulsen! How do you spell that name! A. P-a-u-l-s-e-n.

- (4807) Q. When did you say you took over from Paulsen? When was it you took over from him? A. September 1, 1949.
- Q. Did you say that you bought your supplies from him? That is, whatever he had left over, you purchased it, is that correct? A. Yes, sir, I purchased his stock.
- Q. Do you recall how moch that was! A. That was, I would say, around about \$3500 to \$4000 worth of actual inventory, tires, accessories and batteries, outside of the machinery.

#### Ross Rittenhouse, for Respondents-Cross

Q. Was that Firestone mainly? A. I would say that it

was probably 75 per cent Firestone.

Q. Was your transaction in buying that stock just between you and Paulsen? Did you write a check to him for the amount or how was that handled? A. Yes, that is right.

Q. Neither Firestone nor Texas were involved in that transaction? A. No, they weren't involved in the trans-

action, only just for signing the lease.

Q. Yes, but I mean in that transfer of stock from Paulsen to you, there was no agreement or no negotiations conducted with Firestone or Texas? (4808) A. No, the deal was made between Paulsen and myself.

Q. At that time did you buy any additional material from Firestone? A. I did from that point on for some

time, yes.

Q. No, but I mean before you opened the doors for business? A. No.

Q. Just operated on the stock you had purchased? A. Yes. He had a very rounded out stock.

Q. You operated on the stock you purchased from Paulsen? A. Yes.

Q. How often did you say—I think you said you missed one of these sales meetings in more than nine years, is that correct? A. Yes, that is right.

Q. How often are they conducted in a year's time, do you know? A. I would say there are probably five on the

average, five or six meetings a year.

Q. During those meetings or at those meetings are there any representatives of Firestone present? A. Occasionally there will be a meeting, that is when it is a large meeting, and they will have a display there or something of that sort.

(4809) Q. What is a large meeting? A. When they include the Chicago and the Waukegan area, that is with more dealers.

Q. Do they discuss TBA at that time! A. Well, only the importance of making ourselves more money and all.

Q. Do they discuss the merits of Firestone? A. No. No, there is nothing discussed about that at all. That is secondary to our meeting. The primary purpose is movies and talks on our products in the petroleum industry.

Q. What sort of movies are shown? A. Well, various movies of oil and products, knowledge of our own products.

Q. Haven't I seen some pictures of TBA items, new TBA items, movie strips of those, have you ever seen that type? A. No, I have never seen any.

Q. You haven't seen those? A. Nothing on TBA.

Q. You state that you don't display your Quaker State oil and what is the reason again? A. Well, the Quaker State oil is only requested by a few customers, and we keep it under the shelf because it costs me \$2.00 more a case than the Haviland oil (4810) and it retails for the same price; therefore I make more money off of the Haviland oil.

(4811) VINCENT H. ALLEN, a witness called on behalf of the Respondents, being first duly sworn, was examined and testified as follows:

## Direct examination by Mr. Lorenzen:

Q. Will you state your name? A. Vincent H. Allen.

Q. Where do you live? A. Glen Ellyn, Illinois.

Q. What is your business? A. Gasoline and oil, Texaco Service.

Q. Do you have a lease? A. I have.

Q. How long since you have seen it? A. Goodness knows; I haven't seen it in a good many years.

Q. Do you know whether it is one of those standardform leases that has a clause in it about being cancellable at the end of each year? A. No, I don't.

Q. As far as you know are you in there from year to year? (4812) A. It automatically renews itself.

Q. Each year? A. Each year.

Q. And that has been going on for 25 years, has it?

A. 24, to be exact.

Q. You have been a dealer at that location all that

time, have you? A. I have.

Q. About what is the gallonage of your station? A. It runs anywhere from 9,000 to 17,000.

Q. Do you handle any TBA? A. I do.

Q. Will you tell us the reasons why you handle it? A. To make money.

Q. Do you make money on the TBA items themselves?

A. Yes, sir.

Q. Do you feel it helps attract customers to your station? A. Yes, I do.

· Q. For gasoline sales, among other things? A. That's

right.

Q. What is your understanding of the Texas Company's TBA policy and program, generally? A. Well, I suppose they would recommend me to handle the Firestone or Goodrich TBA but they have never said (4813) anything to me about handling any other line.

Q. That is, you feel that you could handle any other

line, if you wanted to? A. I have done so.

Q. In fact, you handle no sponsored line at all, do you?

Q. So you have been acting on what you understood

the policy to be? A. Right.

Q. Has anyone from the Texas Company ever told you that Texas Company wouldn't renew your lease if you continued to handle this non-sponsored merchandise? A. No; no one has ever said a word to me about it.

Q. Or told you that they wouldn't look on you unkindly

or treat you badly? A. No.

Q. Nothing like that has ever happened? A. No, sir.

Q. From whom do you buy your TBA? A. I buy all my tires and tubes from Berry Tire Company; my batteries from Berry Tire Company, and some accessories.

Q. In addition to that company, do you have any other TBA suppliers? A. Yes, Universal Automotive Company, J. C. Olles Wagon (4814) Supply and Wheaton Auto Parts, of Wheaton, Illinois.

Q. Who is the salesman from the Berry Tire Company

who calls on you? A. James Abnernathy.

Q. He calls on you once a week, does he? A. Every Monday.

Q. And you buy from him? A. If I need it, yes.

Q. What sort of tires do you buy from him? A. Dunlop.

Q. Do you stock those Dunlop tires? A. I do.

Q. What sort of batteries do you buy from him? A. What is the question?

Q. What kind of batteries A. Auto-Lite.

Mr. Lorenzen: I have here three photographs which I would like to have marked as Respondent's Exhibits 43-A, -B, and -C.

Hearing Examiner Kolb: They may be marked.

(The papers referred to above were marked Respondent's Exhibits 43-A, 43-B and 43-C, for identification.)

#### By Mr. Lorencen:

- Q. I show you exhibits marked 43-A, -B and -C, and ask (4815) you whether those are pictures taken in your Texaco Service Station (handing photographs to witness). A. They are.
- Q. Do you know about when those pictures were taken?

  A. The last meeting we had,—a little after the last meeting.

  I couldn't tell you about these, in particular.

Q. By meeting you mean when I came out and had a talk with you, in May? A. That is about the time, yes:

Q. And I think a couple of those pictures were taken before that time? A. I believe these pictures here were taken before that time.

Q. By "here", you refer to 43-B and -C? A. Right.

Q. And 43-A, was taken after that time? A. That is right.

Q. Did you make any special preparations whatever in your station before any of those pictures were taken? A. None.

Q. And that is just the way your station looked at the time your pictures were taken and has looked before and after? A. That is right.

(4817) Q. Exhibit 43-D shows a clock and the legend on it isn't clear. Can you tell me whether that clock advertises any kind of a product? A. It is Auto-Lite, something; now whether it is batteries or spark plugs, I couldn't tell you.

Q. Anyway, it is an Auto-Lite clock? A. It is an Auto-Lite clock.

Q. And Exhibit 43-C shows you a regular display of Auto-Lite batteries, is that correct? A. That is right.

Q. And Exhibit 43-B shows you a tire rack? A. That is right.

Q. And what sort of tires are in there? A. Dunlop.

Q. And the name appears on the paper label and on the legend, does it not? A. On the labels and legend, yes.

Q. And this Exhibit 43-A shows a Dunlop Gold Seal sign; where is that located? A. In the lube bay area.

Q. And it is visible, is it? A. Yes.

Q. Through the window? A. One side of the door. You have to open the door or close it. If you come from

the lube bay you can see it (4818) or you can come in from the street and see it.

- Q. Aside from those signs you have no signs on your station whatever, do you, except the Texaco sign? A. That is all.
- Q. And you are located in a high-class residential neighborhood, are you? A. It is right down in the downtown area.

Q. Of a suburb? A. Of a suburb, yes.

Q. No factories nor industry? A. None at all.

Q. In addition to the Dunlop and Auto-Lite products you handle all Gates fan belts and Thermoid! A. Yes.

Q. And Gates radiator hose? A. Right.

Q. And all of the other products you buy from the Berry Tire Company, and Olles, and others are not in either. the Firestone or Goodrich line, so far as you know? A. None of them, no.

Q. Do you stock any batteries now other than dry

charge? A. No, I have nothing else.

Q. Do the Texas Company employes know that you handle these Dunlop tires and Gates fan belts and Auto-Lite batteries? (4819) A. I guess they saw them there when they came in. They haven't said anything to me about it, though.

Q. Have they ever said a word for you to hide them or take them out of there? A. No, not a word was said.

Q. And that you would have to take the signs down or they would cancel your lease? A. Nothing like that.

Q. Nothing like that? A. No.

- Q. In your many years as a Texaco dealer have you gone to the Texaco dealers' meetings? A. In the time since I have been there, I don't think I have missed more than two.
- Q. That means you have attended several hundred of such meetings? A. In my time, yes.

Q. Have other Texaco dealers in this neighborhood also attended those meetings? A. Well, pretty near everybody

around me, yes.

Q. During all of these dealer meetings at any time has any employee of the Texas Company suggested or intimated or said in any way that the Texas Company required its dealers to handle either the Firestone or Goodrich line of TBA? (4820) A. I never heard anything like that ever said.

Q. And has any pressure ever been put on the dealers, so far as you know, at those meetings, to handle the Firestone and Goodrich line! A. None whatsoever, that I know of.

Q. During that time have any of the other dealers who attended those meetings ever said to you that any sort of pressure has been put on them to buy either the Firestone or Goodrich TBA! A. None whatever.

Q. Now, do you find that these dealer meetings are helpful to you in merchandising your TBA? A. Oh, you learn

a good deal from them, yes.

Q. And that is helpful to you in merchandising your Dunlop tires and your Auto-Lite batteries? A. Right.

Q. And also your other line of TBA? A. That is right.

Q. Do you get any other sort of assistance from the Texas Company in connection with merchandising TBA? A. Anything I am in a quandary about I will ask them and they will help me.

Q. They will help you? A. They will help me, yes.

Q. Do you get the dealer magazine? (4821) A. The Texaco Dealer, yes.

Q. Do you find anything that is helpful in there? A. Yes, sir; you bet.

Q. Do your employes attend these dealer meetings also! A. Yes.

Q. You ask them to, do you? A. I do.

## Vincent H. Allen, for Respondents-Cross

#### Cross-examination by Mr. Dias:

Q. Do you operate under a lease? A. Yes.

- Q. The lease specifies a certain rental, does it not? A. One cent a gallon and \$50 a month for two bays. When they put those bays on the station I paid \$50 a month toward those.
- Q. When did they put the bays in? A. About ten or twelve years ago.
- Q. Has your rent varied since then? A. Never. Of course, the more gasoline I would sell the more I would pay at one cent a gallon.

Q. The price per gallon remained the same, one cent per gallon? A. That is right.

(4822) Q. And \$50 extra for the bay? A. Yes, that modification is one cent.

Q. Do you know whether or not the Texas company owns that property? A. They do not.

Q. Do you know who does? A. Yes; a Mrs. Eileen Dodge of Aurora, Colorado, which is a suburb of Denver.

Q. Is that a Mrs. Dodge? A. Yes.

Q. Do you know Mrs. Dodge! A. Very well.

Q. How well do you know her? A. Oh, I have been in Glen Ellyn forty-two years and I have known her practically since I have been in the gas station.

Q. Are you related to her in any way! A. Not at all.

Q. Have you known her for 42 years! A. No, I won't say I have known her for 42 years but I have known her ever since I have been in that gas station.

Q. And that has been 24 years? A. Yes.

Q. She owns the property? (4823) A. She does.

Q. And she leases it to Texas? A. Yes.

Q. And Texas in turn leases it to you? A. That is right.

#### Redirect examination by Mr. Lorenzen:

(4824) Q. Evanston Auto Supply,—doesn't it cover about the same territories as the Berry Tire Company? A. I wouldn't know about that.

Q. They don't call on you anyway? A. No.

STANTON SWANK was called as a witness on behalf of Respondents, and being first duly sworn, was examined and testified as follows:

#### Direct examination by Mr. Lorenzen:

Q. Will you give your name and address to the reporter? (4825) A. I have given my name. It is Stanton Swank. I live in River Grove, Illinois.

Q. What is your business? A. I operate a service sta-

tion in Oak Park, Texaco Service.

Q. And you hold that under the usual form lease, do you? A. I believe it is the usual form. It is a third lease.

Q. The same kind Mr. Allen has, I guess. A. I am the

third party in this lease; I believe it is the same type.

Q. Somebody else owns the property; they lease it to the Texas Company, and the Texas Company leases it to you? A. That is right.

Q. And you are no relative to whoever owns the under-

lying lease? A. No.

Q. And your lease is one of these that renews itself each year? A. Yes, it is.

Q. How long have you been the lessee? A. 21/2 years.

Q. Before that what did you do? A. I worked for the previous operator for approximately four years.

Q. And about what is the gallonage of your station now? (4826) A. It is about 45,000 gallons per month.

Q. What was it when you took over? A. 26,000 a month.

Q. So you have done a good job? A. We have done a good job.

Q. Do you handle any TBA? A. Yes, we do.

Q. Will you tell us your reasons for handling it? A. I handle it to provide a more complete service to our customers and for the profit involved in selling TBA.

Q. Do you find that it is helpful to you in attracting

customers for your gasoline? A. Yes, I do.

Q. You don't stock much, do you, in the line of tires, at least?. A. No.

Q. Very little! A. Very little.

Q. What was your understanding as to whether the Texas Company recommended any particular type of TBA to those dealers? A. I knew they suggested we handle a good line of TBA, either B. F. Goodrich or Firestone; they recommended them but I also knew that it was entirely up to us as to what (4827) we wanted to handle:

Q. Did you get that knowledge when you took over the station or did you have it when you were working for the man who was ahead of you? A. Well, a little of both. I knew how he operated and I talked briefly with the sales-

man when we took the place over, too.

- Q. Has anyone from the Texas Company since ever threatened you or intimated to you that if you didn't handle the Goodrich or Firestone line your lease would be cancelled or you would be treated badly in any other way! A. No.
- Q. Nothing like that has ever happened to you? A. No, it never has.
- Q. You do handle some Goodrich tires, do you not? A. Yes.
- Q. Actually—how many tires do you stock? A. It varies from half a dozen to a dozen, approximately.

Q. And can you estimate about what percent of your tire sales come out of stock and what percent are on a pick-up basis? A. Out of stock sales I think would be under 20 percent. Most of our sales we go and pick them up. We are in an area where we are very close to three sources of supplies on tires.

(4828) Q. Are your pickup tires sales limited to Goodrich? A. No.

Q. What kind of tires do you sell? A. I usually look and see what kind of tires the man has been driving on and he asks me often what kind of tires I suggest, and when I say: What have you been using? I asked him what kind of service he got out of his present brand. If he says: I like the Goodrich or Firestone, — whatever it might be, I suggest he buy the same brand, again.

Q. And do you then go and pick up that brand? A. Yes.

Q. And even if it isn't Goodrich you get him what he has on his car that he has been satisfied with? A. Yes.

Q. Does that mean you pick up a number of Goodyear tires? A. Quite a few Goodyear tires, yes.

Q. From whom do you buy those? A. Either Racine Auto Supply or Suburban Tire and Auto Supply.

Q. That is in Oak Park? A. Yes, and for a while we bought tires from the Goodyear truck; they called on our station.

Q. You bought quite a substantial number at that time, did you not? (4829) A. Tes, we did.

Q. Would you estimate what percent of your total tire sales were off that Goodyear truck? A. Well, in the six months' time that he called on us I would say it was 40 percent of our sales were of Goodyear tires.

Q. And then what happened! Did they discontinue that! A. They discontinued calling on us. They discontinued the whole truck operation.

- Q. So then you couldn't buy from them any more? A. No.
- Q. Did you get a good buy from them when they had that truck operation? A. A very good buy, yes.

Q. Is that what motivated you to buy from them? A.

That is what did it, yes.

Q. Do you buy from the B. & M. Auto Supply? A. Yes.

Q. That is a wagon jobber? A. Yes.

Q. Do you buy filters from him? A. Yes, we do.

- Q. And cleaners, car rugs, caps, bulbs, that sort of thing? A. Yes, we do.
- (4830) Q. Generally, a line of what we have been calling accessories in this case? A. Yes.
- Q. And you also buy some of those from Chicago Auto Parts, is that right? A. Yes.
- Q. What is the battery situation; you handle some Goodrich, do you? A. We did for a while. Right now we don't have any. We stock a line of National batteries.

Q. And that is a less expensive line, is it? A. No, I believe it is a better line of batteries.

Q. You think that is a better line? A. Yes.

Q. So you buy it in preference to the Goodrich batteries, is that right? A. Yes.

Q. And do you think you make more money handling the National than the Goodrich? A. I think we make a fair profit, plus selling the customer a quality battery, and we will have less kick-back or less trouble with it.

Q. And that is the reason why you select the National

battery? A. That is right.

(4831) Q. Do you display it openly? A. Yes, we do.

- Q. And has the Texas Company ever threatened to cancel your lease or to treat you badly in any way if you didn't stop handling this National battery! A. No, they haven't.
- Q. Do you display all of your TBA no matter from what source? A. All that we have room to display, yes.

Q. Do you hide anything because you are afraid to let the Texas salesman have a look at it? A. No.

(4832) Q. Suppose your total, TBA amounted to \$4,000? A. Yes.

- Q. Can you tell me how much of that you think is in accessories as distinguished from tires and batteries? A. I misunderstood. I thought you said how much of my total sales is accessories.
  - Q. No; taking in sales of gasoline, you mean? A. Yes.
- Q. Do you understand the question now? A. No, I am not sure what you are asking me about.
- Q. Well, do you know about how much your total TBA sales were? A. Yes.
  - Q. In dollars? A. For a year?
- Q. About how much were they? A. I would say about \$1500 a month.
- (4833) Q. Let us take it by the month, then. In an average month about how much of that, in dollars, do you think is in accessories? A. I would say— Do you mean taking the batteries and tires out; is that it?
- Q. Yes; let us take the tires, tubes and batteries out of it? A. I would say 75 percent of our TBA sales is accessories.
- Q. So that means somewhat in excess of \$1,000 would be in accessories? A. Yes.
- Q. And the balance would be in tires and tubes and batteries? A. That is right.
- Q. Now, can you tell me about what percent of all of your tires, batteries and accessories are bought from either Goodrich or Firestone supply points? A. About 60 percent.
  - Q. How much? A. 60 percent.

Q. Are bought from a Firestone or Goodrich supply point, is that correct? A. Yes.

(4834) Q. Are the Biltmore Tire Supply Company people the only place in which you buy tires? A. Yes.

Q. And all the rest of it is bought from other sup-

pliers, is that right? A. Right.

Q. If you take that \$1500 a month how much of that do you think you buy from Biltmore and how much of that do you think you buy from the others? A. Lately I haven't purchased much at all from Biltmore.

Q. So then that 60 percent would be kind of high if you haven't bought— A. Lately we have been buying

quite a bit of Firestone, very little from Biltmore.

Q. You have been buying more from Firestone? A. This is just recently since the Goodyear truck has discontinued calling on us.

Q. Oh, you went to Firestone when Goodyear stopped?

A. We give Firestone more of our business, yes.

Q. That makes the difference? A. Yes.

(4835) Q. I guess these figures were taken when you were buying from the Goodyear truck? A. Yes.

Q. I show you Respondent's Exhibit 44 for identification and ask you whether you recognize that as being a display in your station? A. I do.

Q. Do you know about when that picture was taken?

A. I believe within the last two months.

Q. By whom was it taken? A. An employe of the

Texas Company.

Q. Was any special preparation made before that picture was taken? A. No.

Q. Is that just the way your station has looked for some time before and about what it looks like now? A. That is correct.

Q. And that display of National batteries shown in the

picture is still there? A. Yes, it is.

Q. And it was there as long as you handled National, is (4836) that right? A. Yes, it has been, yes.

Mr. Lorenzen: I offer the picture in evidence.

Mr. Dias: No objection.

Hearing Examiner Kolb: The photograph may be received as Respondent's Exhibit 44.

(The photograph referred to, heretofore marked for identification Respondent's Exhibit 44, was received in evidence.)

#### By Mr. Lorenzen:

Q. Do you also handle Prestone in your station? A. Yes.

Q. And this Wynn's Additive? A. Yes, we do.

Q. Do you attend any of these dealer meetings? A. Yes, I do.

Q. Do you find that what happens at those meetings assists you in selling TBA merchandise? A. Yes, I do.

Q. Do you receive any other help from the Texas Com-

pany in your TBA sales? A. We do, yes.

Q. What sort of help? A. For example, the Texas Company salesman has worked at our station a number of times and he sells, or tries (4837) to sell our customers many-accessories in our TBA line. They give us, suggest selling methods for all TBA.

Q. Do you find that is helpful? A. Yes, I do.

Q. Do you still have some Goodyear tubes in your station? A. Yes, we do.

#### Stanton Swank, for Respondents-Cross

Q. Are they displayed in the Goodyear box marked with the label? A. Yes, they are.

Q. Where anybody can see them? A. Yes, sir.

Q. Have you ever bought anything from Mr. Carl Olson who is the salesman for the Berry Tire Company? A. Yes, we have.

#### Cross examination by Mr. Dias:

Q. Did you handle Goodrich at one time, Mr. Swank,—tires, batteries, accessories, and so forth? A. We have sold them. We have never handled them exclusively.

Q. Have you ever stocked them more than you are doing recently in the last year or so? A. At no time did our stock exceed more than three or (4838) four tires or batteries.

Q. Where did you get— How about Goodrich accessories; where did you buy those, at Biltmore! A. We bought a very small amount of our accessories from Biltmore. We did buy some from Biltmore.

Q. Incidentally, how long have you been in business?

A. 21/2 years.

Q. Is your station what is known as Eddie and Stan's?

A. It was until Eddie left me last October, and I have another partner now.

Q. What is your present partner's name? A. Vince.

Q. You are now know as Stan and Vince, is that right?

A. That is right.

Q. When did you go into business as Stan and Vince?

A. October 1, 1957.

Q. And you did operate for a while as Eddie and Stan's? A. For approximately 18 months.

Q. And can you tell us when that was? A. From March of 1956 until October of 1957.

#### Stanton Swank, for Respondents-Cross .

Q. Now, is March of 1956 the first time that you personally owned or had a share in the business, is that right?

A. That is right.

Q. And prior to that time you worked as an employe for (4839) 'the prior owner, is that correct? A. That is right.

Q. How long had you been with the prior owner? A. For a total of about four years but it wasn't continuously this last time.

Q. In other words from 1952, off and on, you worked for a total of four years? A. For a total of four years, yes.

Q. Do you recall the TBA that he carried? A. Yes.

Q. What was that? A. I think he sold more Goodrich than anything else.

Q. Then, when you bought the station from him, was there a stock of TBA in the station that you purchased from him? A. Yes, a very small stock.

Q. And what did that consist of A. Well, it was no more than— Do you mean of just tires and—

Q. Tires and batteries? A. I would say at the most three tires and possibly six batteries.

Q. And were they Goodrich? A. Yes.

Q. What about accessories? A. They were assorted accessories.

(4840) Q. Now, after you took over, did you immediately start buying other than Goodrich TBA? A. Yes.

Q. Or did you carry the Goodrich line for a while?

A. We started buying whatever we felt would sell.

Q. As your stock was depleted you filled in where you saw fit, is that it? A. Yes.

Q. Where did you say that you got these National batteries? A. From a man named Ed Byrd; he is a distributor for National.

Q. When was it that you started handling National? A. I think immediately after we opened or we purchased the place from the previous owner.



#### Stanton Swank, for Respondents-Cross

- Q. Did you say that you never maintained a stock of batteries either? A. No, other than these Nationals, we never did.
- Q. How many batteries do you keep in the station at a time? A. Eleven.
- Q. Do you recall the purchase of some Auto-Lite batteries back in June or July of 1956? A. Yes, I do.
- Q. Do you remember where you got them? (4841) A. I believe we bought them from Carl Olson who worked for the Berry Tire Company.
- Q. Was there anything unusual about that transaction? that you recall? A. I can't think of anything unusual about it, no.
- Q. Do you recall that you stacked the batteries with their trade names to the rear? A. I can't recall that, no.
  - Q. You don't recall it? A. No.
- Q. Do you remember how many batteries there were that you purchased at that time? A. I think we purchased six.
- Q. And do you recall that you were reprimended by the Texas Company salesman and for that reason turned the batteries with the name to the rear; do you recall that? A. No. I don't.
- Q. How well do you know Carl Olson? A. Not very well.
- Q. Do you buy anything at all from him? A. No, he hasn't called on us for, I would say, a year and a half.
- Q. When did you start purchasing Firestone? A. Well, we purchased Firestone whenever a customer would specify it.
- (4842) Q. I understood from your testimony, though, that you are going in a little heavily for it now. A. Yes, in the last six months we have been called on regularly by a Firestone representative. He is a congenial fellow and we purchase more from him now.

## Herbert Bolte, for Respondents-Direct

Q. As a matter of fact, you have more Firestone than Goodrich in your station right now, haven't you? A. Yes, our buying habits change quite often.

Q. Do you have any other brand tires in your station,

new? A. I don't believe so.

HERBERT BOLTE, called as a witness on behalf of the Respondents, having been first duly sworn, was examined and testified as follows:

#### Direct examination by Mr. Lorenzen:

Q. Will you give us your name! A. Herbert Bolte.

Q. What is your address? (4843) A. 2218 Sherman Avenue, Evanston, Illinois.

Q. What is your business? A. I am a gas station oper-

ator for Texaco.

Q. Do you have a lease? A. I have a lease, yes, sir.

Q. One of these leases that is renewable or renews itself at the end of every year? A. At the end of each year.

Q. How long have you been in there! A. It will be

two years in August.

Q. About what is the yearly gallonage of your station?

A. The yearly average would be about 18,000, by the month.

Q. Do you handle TBA? A. I do.

Q. State your reasons for handling it? A. To increase customer relations and to get in customers, and also to benefit by the profit off the TBA.

Q. It is a money-making item, is it? A. Strictly; you

have to have it.

Q. Does it help you sell gasoline? A. It does.

Q. Did you understand that the Texas Company recommended Firestone and Goodrich TBA to those dealers? A. I did when I talked to Suffert.

## Herbert Bolte, for Respondents-Direct

(4844) Q. He was some kind of a Texace Company manager, wasn't he? A. He was.

Q. He is dead now? A. He is deceased, yes.

Q. What did you understand about whether you had to buy the Firestone and Goodrich, or whether you could buy something else? A. No, they recommended that you either handle Goodrich or Firestone, and that is all he said to me, and he said the salesman will be around to explain anything to you; if you run into any trouble, he said, he will talk to you.

Q. Have you acted ever since on the assumption that you could buy anything you wanted to? A. Yes, I have.

- Q. And you have, in fact, done so, haven't you? A. I have.
- Q. Has anyone from the Texas Company ever told you that you had to buy only Firestone or Goodrich and if you didn't your lease would be canceled? A. Absolutely not, no.

Q. Or that they would treat you badly in some other way? A. No, not one bit.

- Q. From whom do you buy your TBA! A. I get most of the TBA, or, rather, the tires and (4845) batteries, right now I have buying from—that is, what few batteries I have been getting, tires I have been getting from Northwest Tire in Arlington Heights and a few batteries, and Evanston Auto supplies me with ignition parts and Motive Parts supplies me with sparkplugs and mufflers, and also Miller Auto Supply supplies me with some mufflers and other TBA that I might need, and I have a wagon peddler that supplies me with a lot of my shelf fast-moving items like waxes.
- Q. Those are TBA? A. Yes. Wiper blades I handle from Anderson.
- Q. You handle all Gates fan belts, do you? A. Yes, Gates.

### Herbert Bolte, for Respondents-Direct

Q. What is the principal battery you handle? A. The principal battery I have been handling has been Delco.

Q. And the tires which you get from Northwest Tire

Supply and Firestone! A. They are Firestone.

Q. You don't buy anything— A. I handle maybe just a few other cheaper batteries and that is about all.

Q. In addition to the Delco which you handle most? A.

The Delco I handle about 90 percent of those.

- Q. Except for the tires and the few Firestone batteries; (4846) do you handle any other TBA in the Firestone line? A. No; that is about it.
- Q. And everything else that you buy is from these other suppliers you have mentioned? A. Some of the others.

Q. Do you display all your TBA? A. Yes.

Q. You wouldn't try to hide any of it? A. Not unless I have no room for it and I have to put it some place to get it out of the way.

Q. How long have you been handling those Delco batteries? A. I have been handling the Delco batteries just

about the last year and a half.

Q. Do you have a sign in front of your station advertising Delco! A. Yes, Goodrich, Delco and Firestone, and I had the sign company take them down when they were rebuilding.

Q. Your station has just been rebuilt? A. Yes; it is

better now.

Q. It is reconstructed? A. It is now a modern three-bay station; it is beautiful.

Q. That rebuilding took place while you were handling

batteries? (4847) A. Yes.

Q. They started that rebuilding when you had Delco battery signs? A. They were in the front of the station; I took them down so that they wouldn't get injured by the crews working there. I took them down until they could be placed up again.

### Herbert Bolte, for Respondents—Direct

Q. They are just finishing the rebuilding? A. Yes.

Q. And the signs are going up? A. Yes.

. Q. That includes Delco, Firestone and Goodrich? A. Yes.

Q. There is no understanding that you would have to stop selling Delco? A. No.

Q. And that you would have to stop advertising it by

the sign? A. Nothing.

Q. Nothing has been said about that whatever? A. Nothing has been said to me.

Q. Do your accessories make up a substantial part of

your TBA sales? A. Oh, yes.

Q. I am not going to get into percentages; we got so (4848) tangled up last time. A. I know; it is not so important, I guess, anyway.

Q. Do you stock any other than dry charge batteries?

A. No; no wet batteries at all.

Q. Has anyone from the Texas Company told you that you mustn't display your TBA that is not in the Firestone and Goodrich line? A. No.

Q. Has anyone told you that they would cancel your

lease if you did it? A. No, sir.

Q. What was the gasoline gallonage of your station when you took it over? A. Oh, it was down, I think, around 10,000, something like that.

Q. And what is your gasoline gallonage now? A. I

average about 18,000, the year around.

- Q. Is the Texas Company of any assistance to you in merchandising your TBA? A. Yes, they have been—For one time with the Texaco Magazine and a few of the meetings I have been to—I haven't been able to make many of them but I have made a few.
- Q. And do you find you get any hints that are helpful in selling TBA? (4849) A. You get hints from the sales men and talking to the other fellows. I think it is pretty

### Herbert Bolte, for Respondents-Direct

nice to get together with dealers and find out what they are selling with these individual selling points which are very good.

Q. Is that helpful to you in selling this TBA, whether it is in the Firestone or Goodrich line, or whether it isn't?

A. It is the complete line, yes, sir.

- Q. Do you know what kind of tires the Berry Tire Company sells and handles! A. It handles the Dunlop and also one brand called Imperial of which I have bought a few when I needed them. They have some good buys on them at times, and the only reason I bought them is for people who are looking for something like that, and I let them know it isn't a tire they can get adjusted to too easily on the road, probably, like the Firestone and Goodrich line.
- Q. It is a cheaper line? A. It is a cheaper line, I think. In some cases it is. Not in the case of some of our better tires but they have a tire which you can advise in this line of tires and you can pass it on to the customer.

Q. What about the Dunlop, tire; you don't buy any of those from the Berry Company? A. I never handled those.

(4850) Q. What is your reason for not handling those? A. I want to sell the name brand tire; wherever they go something can be done with that tire. It can be adjusted in practically every little town, at every Firestone store, and there is a Firestone outlet in practically every place you go.

Q. Is the reason you don't buy that Dunlop tire from the Berry Company because you are scared to do it on

account of the Texas Company? A. No.

Q. That has nothing to do with it! A. No; I don't' want to have my customers get dissatisfied in case they get out on the road and something couldn't be adjusted for the car.

Q. Did you have a conversation with the man at the Berry Tire in which you told him that? A. Yes, he is no

longer with them there.

Q. What percentage of all your tire sales do you think is made out of stock and what do you think is made on a pickup basis! A. I would say around 65 or 70 percent, probably, is pickup. For me it is.

· Q. So that for 65 or 70 percent do you pick up whatever kind of tire the customer demands? A. Whatever

they ask.

(4851) Q. And if it is not Firestone you get what he wants, is that right? A. I would get any major brand he wants outside of Atlas or something like that.

Q. Otherwise you would get him any major brand he

asks for? A. I do, yes, sir.

Mr. Lorenzen: That is all.

Hearing Examiner Kolb: Cross examine.

### Cross examination by Mr. Dias:

Q. Can you describe your old station? A. It was a two-bay station, about 30 years old, and it had small windows; actually I never put anything up in the windows of that, because if I had I would have had to have the lights on all day and not only that, there was a lot of condensation through the station over a period of years, — everything would sweat and everything would fall off the windows if you put them on it anyway, so I just let them down. I didn't have too much space for displaying anything in the station outside of batteries.

Q. Was your name every submitted to Goodrich or Firestone as a prospective TBA seller? By that I mean you didn't have facilities to handle TBA, did you, at your old station? (4852) A. Well, I had a tire rack but when I bought the place there were so many used tires on it there

wasn't any place to put a lot. I couldn't stock too many although I could have stocked some if I had wanted to.

Q. When did you go in there? When is the first time you went into the station? A. In August of 1956.

Q. Did you buy out the prior owner? A. I did.

Q. Did you buy his stock? A. Everything.

Q. When you took over, did you buy the new stock? A. No, not at first. I didn't buy hardly anything at all.

Q. What kind of stock did you have in there, in the way of TBA? A. He had a general line of TBA, Dahl thermostats, and Anderson wiper blades, and he had A-C and Champion spark plugs, and a few Goodrich batteries, I am sure of that, and I am sure there was one or two; I was trying to think, before, - I think there were one or two Auto-Lites in there. I am not positive but I think there was because I know I sold one of them.

Q. Did you see any new Goodrich tires in the station? A. No, the fellow who was in there was in pretty bad shape with home troubles, domestic troubles, I should say, and he was one of those fellows who didn't have too much to go and fool around in the tire business. He told me that himself when I asked him why he didn't.

have any.

Q. You didn't buy any new stock until how long after you were in there? A. I think it was a couple months

after I got in there.

Q. When you started to buy, what brand did you buy? A. First I went into Goodrich. I was buying from Biltmore and would get most of my tires and batteries from Biltmore. I was working sort of on a budget myself so I was buying things as I needed them, although I ended up stocking a few batteries.

Q. Were they from Biltmore? A. Yes.

Q. Goodrich batteries from Biltmore! A. Yes.

Q. And the same is true of the tires you had! A. Yes.

Q. Did you buy accessories from Biltmore? A. Very little. I was buying sparkplugs for a while.

Q. Goodrich plugs? A. No; those were Champions.

Q. How soon after that, then, did you start buying other lines? A. Well, I went into Delco, I think; I ran into a little (4854) trouble getting some Goodrich batteries when it was real cold in 1957, I think it was, — in January of 1957, and I got into Delco in that year.

Q. What sort of trouble did you have in 1957! A. We had a pretty cold January and batteries were scarce, the small batteries. I started to get Delcos; a fellow had them set up and I called in to see if he could get me batteries and

I got them.

Q. Did you explain to the Texas Company the lack of

batteries from Goodrich? A. No.

Q. Where did you buy, or where have you been buying your mufflers? A. Mostly from either Miller Auto Supply; most of them from Motive Parts; the AP muffler, they call it.

Q. And filters? A. Miller Auto Supply.

Q. Was Miller Auto Supply the man you used to work

for! A. No, I worked for Motive Parts.

Q. What do you buy from Motive Parts! A. Mostly mufflers or tail pipes, sparkplugs, and some equipment I might need.

Q. Do you do some repair work at the station? A. Yes,

sir; minor repairs.

Q. Will you have more room for that now that your (4855) station is rehabilitated? A. Repair work?

Q. Yes. A. A little bit, yes.

Q. What exactly has been done to your station? A. They have torn down the old building and put up a new one.

Q. A new building? A. Yes, the old one is gone.

Q. Do you have more driveway space and that sort of thing now! A. Yes.

Q. When did they start on that? A. It was started, I think, last May.

Q. You mean a year ago? A. No, just about April or

May; it is just about completed.

Q. Can they tear a station down and put it up that soon? A. They have the steel pre-fabs for the station.

Q. That is May of 1958? A. Yes, last May; last April.

Q. When did you first hear about this lawsuit? A. When did I first hear about it?

Q. Yes. A. A couple months ago. I heard something about it quite (4856) a while back, in the paper.

Q. When did you know you were going to testify? A. When did I know?

Q. Yes. A. When I knew I was going to testify was yesterday, that I was going to testify today.

Q. You must have known some time earlier? A. Yes, I

had a talk with one of the men.

Q. How long ago was that? A. I believe that has been a couple of months ago; right around that.

Mr. Dias: I have nothing further.

Hearing Examiner Kolb: Is that all?

Mr. Lorenzen: That is all.

Hearing Examiner Kolb: We will have a short recess.

(Recess had.)

(4857) Hearing Examiner Kolb: The hearing will come to order.

JOSEPH NOVAK, JR., was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

### By Mr. Lorenzen:

Q. Will you tell us where you live, Mr. Novak?

Hearing Examiner Kolb: Better get his name first.

The Witness: Joseph Novak, Jr., 3800 West 68th Street.

#### By Mr. Lorenzen:

Q. And what is your business? A. Joe's Service Station—Texaco.

Q. Where is that located? A. 74th and Morgan.

Q. Chicago? A. Chicago, Illinois.

Q. You have a lease from the Texas Company? A. Yes, sir.

Q. It's one of these leases that is renewable or renews itself at the end of each year? A. It's an automatic renewal lease.

Q. At the end of each year? A. After each year.

Q. And it can be canceled at the end of each year on ten days' notice? (4858) A. That's right:

Q. You started in at this station about when? A. '51, sir.

Q. That's about seven years ago? A. Yes, sir.

Q. Now, at that time your lease was not with the Texas Company, was it? A. No, sir.

Q. With whom was it? A. Northwest Gas & Oil.

Q. Was that company what's known as a distributor?

A. Yes, sir.

Q. And it was a distributor for Texas Company gasoline! A. That's right.

Q. And then when did you get your lease from the Texas Company? A. About three years ago, I think it is.

Q. So you handled the same gasoline for the whole six

years? A. That's right.

Q. The only difference was that your lease was what is—with a distributor for part of the time, and it's with the Texas Company now? A. That's right.

Q. About what is the monthly gallonage of your station

on the average? (4859) A. Average around 22,000.

Q. Do you handle TBA? A. Yes, sir.

Q. Will you tell us the reason for handling it? A. Well, it's a profit to me to handle TBA.

Q. You make money on the TBA itself? A. That's

right, sir.

Q. Do you feel it helps you in your gasoline sales? A. Yes, sir. When they stop at the pumps, I have it displayed in the window, and they see something—they ask, and I sell.

Q. That's the TBA! A. That's the TBA.

Q. Do you feel you would sell less gasoline if you didn't sell any TBA at all? A. Well, no, I still sell gasoline, but I make a better profit by having TBA.

Q. Do you find the motorists demand what they call one

stop service? A. Yes, sir.

- Q. And that means you got to handle TBA, doesn't it? A. Yes, sir.
- Q. Now, during the seven years you've been a Texaco dealer have you had an understanding as to what the Texas Company's TBA program and TBA policy has been! A. Yes, sir.
- (4860) Q. Will you tell me what you understood it to be! A. Well, they went along and they told me to go along and to keep the stations clean, to handle TBA, and to treat the systemers your well

to treat the customers very well.

Q. Well, now, in TBA, did they tell you anything about whether they recommended anything—any particular line? A. Well, they recommended—they said to me, buy B. F. Goodrich, or Firestone, or whatever the customers wanted.

Q. Well, did they tell you had to handle one or the other or that you could handle what you wanted? A. No, sir.

They didn't tell me anything that way.

Q. Did you understand that you could handle what you wanted? A. Yes, sir.

Q. And in fact, have you done it? A. Yes, sir.

Q. In fact, right now you don't buy any sponsored TBA, do you? A. No, sir. Just Firestone tires, that's all I buy.

Q. And you don't buy those from an authorized Firestone dealer, do you? A. No. sir.

Q. So you buy nothing on which the Texas Company gets any commissions? A. No. sir.

Q. Has anyone from the Texas Company ever told you that they would cancel your lease if you didn't start buying from some (4861) designated Firestone or Goodrich supply point? A. No. sir.

Q. Nothing like that? A. No, sir.

Q. You've never been threatened? A. No, sir.

Q. They've never told you that they would treat you badly on account of the way you bought your TBA? A. No, sir.

Q. Now, from whom do you buy your TBA! A. Well, my batteries I buy, and my spark plugs, mufflers tail pipes, I buy from Chicago Auto Parts.

Q. And that goes also, does it, for fan belts? A. Fan

belts, yes. Gates fan belts.

Q. And batteries? A. That's right.

Q. You mentioned those, did you? A. Yes.

Q. Anti-freeze? You buy some from them? A. Yes, sir.

Q. And additives and chemicals? A. Comes from Chicago Auto Parts.

Q. And did I ask you about fan belts? A. That's

right.

- Q. Filters? (4862) A. Well, the filters I buy, and a list of accessories, like mirrors and extension pipes, and so forth—I buy from two jobbers.
  - Q. And who are they? A. Charles Glass, and Carmen.
  - Q. Now, do you like the Firestone tire? A. Yes, I do.
- Q. At one time did you buy it from a Firestone distributor? A. Yes, I used to do quite a bit of business with Firestone, when they were at 78th and Halsted, because I used to do their work. So I bought all their merchandise. Then they moved to 66th and Halsted, under new management, and since they moved there they changed their policy and do their work in the other stations and only send me work that the other stations couldn't do. So we had a dispute and I stopped handling their products.

Q. But you still like the Firestone tire! A. Yes.

That's the only tire I do sell, is Firestone.

Q. And you buy that now from what kind of a company? A. Krug Tire Company—about a half a block away from it.

Q. Now, what's the name of the batteries that you

handle? A. Delco.

Q. Do you keep those openly in your station? A. Yes, sir.

Q. Do you display all of your TBA items? (4863) A. All of my merchandise can be seen.

Q. What kind of fan belts have you got? A. Gates.

Q. And radiator hose? A. Gates.

Mr. Lorenzen: I ask to have these two pictures marked as Exhibits 45-A and B.

Hearing Examiner Kolb: May be so marked.

(The photographs referred to were marked Respondent's Exhibits 45-A and 45-B for identification.)

#### By Mr. Lorenzen:

Q. Mr. Novak, are Exhibits 45-A and B pictures of a display of Delco batteries and a lvertising in your station? A. That's right. Both in the station.

Q. When were those pictures taken? A. The exact date

I don't know, but it was some time in May.

Q. Who took them? A. It was a Texaco salesman.

Q. Was any special preparation made of your station when the pictures were taken? A. No, sir. I didn't even know they were coming around.

Q. And so that's just like your station looked? A. Just

as it is now, too.

Q. And is that just about the way your display was before that? A. Yes, sir.

Q. And has been since? (4864) A. Yes, sir.

Mr. Lorenzen: I offer the pictures in evidence.

Mr. Dias: No objection.

Hearing Examiner Kolb: The photographs will be received in evidence as Respondent's Exhibits 45-A and B.

(The photographs referred to, heretofore marked for identification Respondent's Exhibits 45-A and 45-B, were received in evidence.)

#### By Mr. Lorenzen:

Q. Do you display any Goodyear tubes in your station?
A. Yes, sir.

Q. You've got those in boxes labeled "Goodyear"? A. Yes, sir.

Q. And they're on your shelves where anybody can see them? A. Yes, sir.

Q. Now, has anyone from the Texas Company ever told you to hide your Delco batteries, or Goodyear tubes, or Gates fan belts? A. No. sir.

Q. Have they ever made any kind of a threat to you about that display of merchandise? A. No, sir.

Q. None whatever? A. No, sir.

Q. Do you stock any batteries other than dry charge? (4865) A. No-dry charge batteries.

Q. I don't have to do any percentages with you. You just don't buy anything from the Firestone or Goodrich supply points, do you? A. At the present time, no.

Q. Now, do you get any assistance in merchandising or selling your TBA from the Texas Company? A. Well, a salesman comes around, he tells me different things once in a while, what's new coming on the market, and so forth.

Q. Do you attend dealers' meetings? A. Yes, sir.

Q. Do you get any help there in connection with merchandising your TBA! A. Yes, sir, I do.

Q. And do you get the Dealer Magazine? A. Yes, sir.

Q. And do you get any help out of that? A. Yes, sir. I enjoy reading it.

Q. And that's the Texaco magazine I'm talking about.

A. That's right, sir.

Q. And the meetings I'm talking about are those of Texaco dealers. A. That's right.

Q. Sponsored by the Texas. Company. (4866) A.

That's right.

Q. Now, Mr. Edelson of the J. E. Auto Supply Company testified in this case that he couldn't sell you, and he implied that that inability to sell you had something to do with the Texas Company's policy. Will you tell me what your dealings with the J. E. Auto Supply Company have been and why you don't buy from them? A. Well,

the reason I don't buy from them is a personal reason. At. one time a salesman named Paul Prep worked for J & E, and I knew him, and that's when I first went into business.

And he came over trying to sell me, and I says, "Okay, Paul," but I says, "I don't have cash because everything is in the busings. So set me up with a charge account." And he says, "Fine, Joe. Give me a week or so and I'll have you set up."

So I waited, and meanwhile Chicago Auto set me up with a charge account in no time at all. And finally Paul came around, and he says, "Joe, I got you set up. How can I help you out?" So we ordered about \$90.00 or so of merchandise. And the following day the driver brought it out. And he brought the merchandise, and I checked it in, and then I was going to sign for it. And the driver says, "No, I'm sorry," he says, "This is C. O. D."

I says, "Well, I'm sorry, I don't have that kind of money (4867) on me." I told him, "I think there must have been a mistake. You better call your boss." So he called up, and one of the bosses answered the phone. So he

told the driver it's strictly C. O. D.

So I asked the driver, "Please let me talk to him." So I talked to him over the phone, and I told him that, "Gee, I says, Paul okayed my charge account, and why is it you want C. O. D. now?" And he answered, "Well, Joe, you see, you're first starting this business, and we can't afford to gamble with you."

Well, by that time I was hurt. So I told him that if he can't help me out now when I need the help, that—
"take your merchandise back and don't ever come around my station any more," that I would never buy from him.
And to this day I still don't buy from him.

Q. And is that the reason you don't buy from him? A. That's right, sir.

#### Joseph Novak, Jr., for Respondents-Cross

Q. And has nothing to do with anything that anybody from the Texas Company ever said to you? A. No, sir.

Q. Now, you made this arrangement with J. E. Auto Supply, and you got a charge account with this Capital Auto Parts very soon— A. Chicago Auto Parts.

Q. Capital? A. No, Chicago.

(4868) Q. Oh, Chicago Auto Parts—soon after you said you went into business, is that right? A. That's right, sir.

Q. Now, by that you meant soon after you got a lease

on this station, is that right? A. That's right, sir.

Q. I don't know, I'm a little gun shy, Mr. Novak. Do

you think I can do a little percentages with you?

What about—what percent of all of your TBA—and I'm just talking about TBA—what percent of all your TBA do you think is in tire sales? A. In tire sales? Oh, about, say, around 40%.

Q. And that is if you sold \$450.00 a month, you'd figure

about \$200.00 of that is in tires? A. Yes, sir.

Q. And how much do you say is in accessories? A. Oh, about twenty-five.

Q. You've been very successful in your tire sales within the last year or two, haven't you? A. That's right, sir.

Q. And so you've bought them up quite a lot? A. That's right.

Q. And those were the Firestone tires? A. That's right.

Q. That you bought from Mr. Krug? (4869) A. That's right.

### Cross-examination by Mr. Dias:

Q. You understand that Texas receives a sales commission from Firestone on products sold to Texaco. stations? A. Yes, sir.

### Joseph Novak, Jr., for Respondents-Cross

Q. You understand about that? A. Yes, sir.

Q. On these purchases from the Krug Tire Company, do you of your own knowledge know that on your purchases of tires from that company, that Texas does not receive a commission? A. Yes, sir, I know that.

Q. How do you know that? A. What? Well, that we read it in the papers. I read it in my papers myself where Texaco got so much money from Ben F. (4870) Goodrich

and Firestone.

Q. Well, why would that exclude Krug? Doesn't Krug sell Firestone? A. Well, Krug is an independent dealer himself. He's been there for years.

Q. How do you spell his name! A. K-r-u-g-Krug

Tire. He's been there very, very long.

Q. He's been there—does Krug handle anything besides tires? A. No, sir. Strictly tires. Shop, repairing tires, selling tires; and he handles Universal batteries.

Q. Do you buy any of his Universal batteries? A. No,

sir.

- Q. Could you describe your station for us, Mr. Novak? Is it one of the new stations? A. No, sir. It's an old station.
- Q. How old is it about? A. Well, gee, it's hard to say, sir. It's been there an awful long time before I got there, I'll tell you that. I'm there seven years, and it must be about twenty-five or better years old.

Q. Do you have much room in there for the storage of

TBA? A. Yes, sir.

Q. Where, in the show room? A. Well, I have the—one room place, with a big plate (4871) glass, and I display everything. You can see it right from the drive.

Q. Do you have any wash rooms and that sort of thing

in the station? A. I just have one, sir.

Q. Do you keep any supplies in there? A. In the wash room? No. I can't. It's just a small one that—I can't even—just a small one.

Q. Do you know whether or not your name was—that is, your station—has been submitted to the Goodrich or Firestone people as a possible outlet for TBA? A. I don't know that, sir.

Q. Were you ever rejected by Goodrich or Firestone

as a dealer? A. No, sir.

Q. Now, you mentioned the fact that J & E did not extend credit. Were you talking about the—when you first went into business back in '51, was it, or '55? A. '51, sir.

Q. Back in '51. And to whom did you make your payments then for rent? To the Northwest Gas? A. Yes, sir.

Q. Did they collect their rent each month? A. I sent

a check into them every month.

Q. Did you ever ask them for credit? (4872) A. No, I never bothered with credit.

Q. When you took over the station, what sort of TBA was in it? A. Well, it was pretty well run down, sir, and there wasn't very much of anything. In fact, it took me a long time to get on my feet. It took me almost three years to get on my feet.

· Q. And was that then when you got the lease from the Texas Company—about another year later, wasn't it? A.

That's right.

LAWRENCE STARR was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

### Direct examination by Mr. Barton:

Q. Will you give your name to the reporter, please? A. Lawrence Starr.

Q. And what is your address, sir? A. 1140 Morse Avenue.

Q. What is your business affiliation? (4873) A. Biltmore Tire Company.

Q. Where is the Biltmore Tire Company located? A.

2011 West Division Street, Chicago.

Q. What is the business of Biltmore Tire Company?

A. Biltmore Tire is interested in selling tires, batteries, cessories, Havelin motor oil, Marfak grease, to new car dealers, used car dealers, service stations, garages, truck companies, and anybody who will have them.

Q. And how long has Biltmore Tire been in operation?

A. Thirty-five years.

Q. Who formed it? A. A gentleman by the name of Lawrence Starr. That's not me.

- Q. What's his relation to you? A. An uncle.

Q. I see. Will you trace the development of Biltmore Tire? A. Well, as I say, it was started 35 years ago, in a store about, oh, it was a half of a store, 25 x 125. We had half of a store. And over the years we accumulated that store, and a garage adjoining the building, plus another building, and warehouse building, and up to its present state. We remodeled about eight years ago.

Q. And who are the participants in the business? A. Well, there's 35 employees, of which there are six Starrs

there, and-

Q. With two "r's"! (4874) A. Yes. S-t-a-r-r. And we have five salesmen, we have an office force of four girls, and a head bookkeeper, and we have truck drivers, and delivery men, and service personnel for tire mounting and seat cover mounting.

Q. Over how wide an area does Biltmore Tire operate?

A. We cover the entire metropolitan Chicago area, and including up into Libertyville, Illinois, Gary, Indiana, Elgin, Aurora, St. Charles, and all the northern suburbs, Wilmette, Glencoe, Highland Park.

- Q. And how many customers does Biltmore Tire have in that area all told? A. I'd say we have an active list of about 700.
  - Q. 700 customers? A. They're active.
- Q. For the various products which you sell! A. That's right.
  - Q. And the products which you sell are— A. Tires
  - Q. What brand tires? A. B. F. Goodrich Tires.
- Q. And do you—what batteries do you sell? A. B. F. Goodrich batteries.
- Q. And what accessories do you sell! A. Well—brand names!
- Q. Well, in general. (4875) A. We carry a complete line of auto accessories, and polishes, waxes, also Havelin motor oil and Marfak grease.
- Q. And of these 700 customers, how many are service station customers? A. I would say just a little over 100.
- Q. And how many of those are Texas service station customers? A. About half.
  - Q. About 501 A. Right.
- Q. Now, how is this area divided up, the Chicago metropolitan area, among you and your brothers, and father, and uncle? A. Well, actually we have one man who is not a Starr calling on the outside. We have one gentleman—
- Q. His name is what? A. Otto Wittendorfer. We have a gentleman by the name of Al Adams, who covers the west side of Chicago for us, and the north side is covered by myself and my father, who is Jake Starr. And there is Pat Starr, who handles our national fleet business.
- Q. I see. Where does Bob Starr work! A. Bob Starr and Irving Starr operate the inside of the place.
- Q. It's a family business, isn't it? A. I would say so, yes.

(4876) Q. And for the past few years what has been your responsibility? A. Mainly calling on the north side of Chicago.

Q. By that what do you mean, "the north side"! A. So-

liciting business-well, from Diversey north-really.

Q. Diversey Street- A. Is 2800 north.

Q. And you call on out through Evanston— A. Evanston; Wilmette, Glencoe, plus the north side of Chicago.

Q. I see. And in that area how many customers do you

havef A. About 120.

Q. Whom you're calling on? A. Right.

Q. And how many service stations in that area!, A. Twelve.

Q. Twelve! (4877) A. That I call on.

Q. You call on twelve service stations? A. Yes, sir.

Q. And how many of those are Texas service stations?

A. Six, I believe.

Q. Now, in connection with this case, a gentleman by the name of Mr. Dwyer from Barry Tire Company testified at page 907 of the record, and the burden of his testimony was that he represented, I believe, Barry Tire, and he sold Dunlop tires, and—the burden of his testimony is he lost a customer in Evanston named Swifty's in the sale of Dunlop tires to B. F. Goodrich and Biltmore around 1956.

Now, will you explain to His Honor the circumstances under which you—first of all, did you acquire Swifty's as

a customer around 19567 A. Yes.

Q. For tires? A. Yes, we did.

Q. Now, will you explain to His Honor the circumstances under which you got that account? A. Well, starting in about 1954 I started to call in that area, and he being in that area I stopped at Swifty's Texaco. And it took, oh, three or four or five calls before he even got to know my name. I mean, before he would talk to me.

And I didn't make a call there every week. When I say three (4878) or four calls, I made a stop, and maybe a month later I'd wind up going back, and over a period of a year I would say it was that those first four or five calls were made.

And after that time, getting to know the man a little better, I found out that I couldn't sell him Goodrich tires because he was buying Dunlop tires cheaper than I was asking him to buy Goodrich tires for. So I went back to Biltmore Tire Company and I talked it over with Irving Starr, who is our sales manager, and Irv and I came to the conclusion that if I offered him Goodrich tires at the same price that he was buying Dunlop tires, that I felt confident enough that the man would be smart enough if he could buy a major brand tire for the same price as an off brand, that he would make the switch.

So on that basis I went back out to see him, and I presented the program to him, told him just what we would sell him Goodrich tires for, and he agreed. I mean, he felt that, prices being equal, it was much to his advantage to handle a major brand tire. And from that time up until the present time I've been selling him Goodrich tires.

Q. And were there any other circumstances which related to this change? A. Yes.

Q. At that time? A. At the time—I say, after about the fifth call, when (4879) I finally got him to admit that he was buying tires at a cheaper price, and I came back to him and told him about our Goodrich setup, he was complaining to me about the adjustment policy of Dunlop. He had sent a tire in to Barry and waited a reasonable length of time and then called Barry up, and Barry said, well, they would check it. And another month went by, and he called back, and they had misplaced the tire entirely. And he was kind of upset about that, and he asked me what type of a program we had as far as adjustments were concerned.

And our program is such that if we pick up a tire today -I mean, if a man called us, a station, or-called us and said they had a tire that he wanted scked up for adjustment, our truck would pick it up tomorrow. And when that truck driver brought it back to Biltmore Tire Company, Bob Starr, who handles our adjustments, would then immediately determine if that tire was defective and if it warranted adjustment, or if it didn't. And the following day that man, the service station operator, would get a call and Bob would tell him, now this is the deal, the tire is 10% worn, and the adjustment is so much money. Or, the tire does not come under the heading of warranty, and we have to return it. And it would be expedited immediately. I mean, doing business with six or seven hundred people, we can't accumulate tires. We must handle it completely, immediately, for our own benefit.

(4880) Q. Do you find that that service is a sales point in this area? A. I think it's a great aid, yes, I do. In fact, if I'm making a call on a station and they happen to have a tire that they've taken in, I'll make the adjustment at the time I make the call.

Q. What really are you talking about, "an adjustment"? The customer comes in and— A. The customer comes in with either a tire that he has bought from the service station, or an original equipment tire. I mean, he sees the man has a B. F. Goodrich identification, and if he has Goodrich tires on his car and something has gone wrong with one of the tires, he pulls into that station. He says, "I'd like to have this—is there anything that you can do with this tire?" So the service station operator tells him, "Well, I'll have our distributor, pick the tire up," and we'll see what we can do for the man.

Q. What does he do in the meantime? Puts the spare on? A. He puts the spare on. And we prefer to pick the tire up off the wheel so we don't lose the wheel. We have him

dismount the tire, and then we pick it up and determine if the tire is defective, either through workmanship or material. And then, based on the wear of the tire, it's replaced to him on a prorated basis.

Q. In other words, that's a service that a customer, ultimate (4881) customer, of the B. F. Goodrich Tire can obtain from any dealer or any service station who handles his tire? A. Any B. F. Goodrich dealer in the United States.

Q. In other words, one of your customers who handles Goodrich tires, if he buys a tire there he can get an adjustment if the circumstances warrant? A. That's right. And even if he hasn't bought the tire.

Q. Pardon! A. And even if he hasn't bought the tire from one of our stations or ourselves, just as long as he has a B. F. Goodrich tire on the car, it's got a name and a serial number, and if it comes under the heading of a defect it is replaced to the man.

Q. Now, what's the nature—does Mr.—who is the owner of Swifty's? Kischer, isn't it? A. "Swifty." That's the way I know him.

Q. Does he own that property? A. No.

Q. Well, is he a lessee of the Texas Company, do you know? A. No. He leases from the owner.

Q. I see. In other words, he leases the property from the owner and then— A. And then releases to the Texas Company, which releases back to him, I guess, and—

Q. I see. (4882) A. That's the arrangemnt.

Q. Now, what type of batteries does he handle? A. Delco.

Q. Who does he acquire those from? A. Evanston Auto.

Q. Evanston Auto is located close to him, is it? A. Yes, within six or seven blocks.

Q. And what kind of accessories does he handle? A. Well, he handles a major line of polishes, of—he handles all types of spark plugs, he handles A-C filter, he handles various types of additives.

Q. Who does he acquire them from? A. Mostly from Evanston Auto, I believe.

Q. Do you sell him any accessories or batteries? A. I

have never sold him an accessory or a battery.

Q. And, now, in connection with your contacts in the area in selling service stations, do you use any different efforts or sales practices in selling to the Texas stations than you use in selling to other service stations? A. No.

Q. What is the sales program that you have to go into in connection with the sale of tires to an account? A. Well, if I'm going in cold to a new stop, I introduce myself and the company I represent, and I try to give them a little background of Biltmore Tire Company, because we're very (4883) proud of the fact that we're in business for the length of time that we are in business, and we're an established concern. And I try to stress to the operator that he's buying from an established firm, not from a wagon jobber or a wagon peddler, and that has certain benefits. And then I try to sell the man on my products, B. F. Goodrich products, B. F. Goodrich batteries, and—

Q. You don't usually do that on the first call, or on the

telephone, do you? A. Oh, man-no, sir.

Q. It's a matter of— A. I have to be extremely lucky to go in the first time and sell a man; unless you've got an exclusive product, that would be the only time that I can see going in to make a first call and selling a man the first time.

Q. You mean where you had the first dry charge bat-

tery, or the A. Or the only dry charge battery.

Q. Yes. Or the tubeless tire in the early days. A. That's right. It takes four, five calls. I say it takes four calls before he even knows your name. I mean, you may know the man's name you're calling on, but you tell him, I'm Lorrie Starr from Biltmore—he's listening to you, in one ear, out the other. And after about the fifth time telling him that he realizes maybe you're Lorrie Starr from Biltmore.

(4884) Q. Now, in connection with your selling to these Texas service stations and other service stations in the area which you cover, do you notice any difference in the reaction resulting from the assistance, merchandising assistance, you obtain from Texas Company? A. Well, the merchandising program of the Texas Company is an aid. There is no question about it. And I would say the selling other than Texas stations, it is a little more difficult, yes.

Q. You mean the promotion of products in the station?

A. That's right.

Q. And in that connection, how many different tire sizes are there that you handle? A. Well, just to give you an idea, 670 x 15, which is our most popular tire size today—B. F. Goodrich Tirés at the present time has 19 different 670 x 15 tires available to the customer. That's not counting any discontinued sizes—I mean, any discontinued tires that they might have where they changed the tread design from time to time. But currently there are 19-670 x 15's that I am in a position to sell a service station.

Q. And what other kinds of sizes, other than 670 x 15? A. That's 670, 710, 768, 820; then you have your 14-inch tires on your '57 and '56 cars, 750 x 14, 808 x 15, 909 x 15, and you still have a few calls for 616 and 650 x 16. That about encompasses the passenger car business, not going

into trucks or anything.

(4885) Q. Mr. Starr, by virtue of the fact of all these different sizes, what problems are there in connection with the service station business? A. It's becoming a major problem with us. The service station can't stock tires consequently, due to all these different sizes and types, and we have to be in a position to give many services when he needs it. He may call up and say I need four tires, and the customer's coming in this afternoon, I'd like to get them. So we have to put four tires in a vehicle and send it out

to him. And sometimes it becomes pretty frantic. We have seven trucks and fourteen passenger car tires around our place of business, and at times we run out of vehicles to deliver. I mean, it just becomes that frantic. So it's a question of you have to be able to give a man service in order to even begin to hold his business.

Q. What would be your—you call on these Texas service stations in your area regularly, don't you? A. Yes, sir,

once a week.

Q. And in the past you called on Texas service stations

in other parts of the City in the area? A. Yes, sir.

Q. What is your estimate of the amount of sponsored products which those Texas service stations to whom you sell, Biltmore sells, is of the total TBA which they handle? A. I would say from 20 to 25%.

(4886) Q. And in that calculation are you including in total TBA repair parts and— A. Well, we don't sell any

parts.

Q. And hard parts? A. We do not sell parts or muf-

flers, or brake linings, or any such things.

Q. So you are not including those items in the estimate of total TBA? A. No, just what you asked me, in TBA.

Q. Just the type of TBA that you sell? A. That I sell,

right.

Q. Mr. Starr, have you ever heard of a Texas dealer buying from Biltmore because he had to buy from you? A. Absolutely not.

Q. You are familiar with the Texas Company policy with respect to the TBA which the dealer may handle? A.

Yes.

Q. And is it your experience that the Texas lessee dealers in the Chicago area understand that pelicy and operate in accordance with it? A. I think so.

### Lawrence Starr, for Respondents-Cross

(4887) Q. Well, have you ever heard of the Texas Company making any threats to stations which refuse to handle sponsored TBA? A. No, sir.

### Cross examination by Mr. Dias:

Q. In your estimate of the amount of sponsored TBA handled by these stations, do you consider Firestone a sponsored brand—as far as being a Goodrich dealer—anything that is not Goodrich as non-sponsored? A. That's correct.

Q. Are there competing Goodrich distributors in your

territory! A. Yes, sir.

Q. Are they distributors such as yourself, designated supply (4888) points for these Texaco stations? A. I don't know whether it's designated supply—they are competing dealers.

Q. Do they handle Goodrich tires, batteries and acces-

sories! A. Yes, wir.

Q. Can you name some of them, please? A. In my immediate territory that I'm calling on?

Q. No, your company's territory. A. Pavlik, McGowan

Tire and Battery.

Q. How about Warwick & Lambie, are they in your territory? A. Yes, in Biltmore's territory. Not in my personal territory.

Q. That's what I'm talking about. I'm talking about

Biltmore. A. Yes, sir.

Q. Gardner-Kineley, is it, or Kinzell? A. Yes, sir-Kineley.

Q. They are all also Goodrich distributors, are they not? A. Yes, sir.

Q. Have you referring now to your stations in your own territory, what TBA generally do the or tires, rather,

### Lawrence Starr, for Respondents-Cross

do the twelve Texaco stations handle? Six I understand handle Goodrich, is that correct? A. Six, yes.

Q. And the other six, what do the other six handle?

A. Firestone, Dunlop, Goodyear.

(4889) Q. Isn't it a fact that primarily they handle Firestone, those that do not handle Goodrich? A. No. I don't think so.

- Q. How about the remaining Texaco stations in the Company's trade area? Isn't it a fact that most of them that do not handle Goodrich are handling Firestone tires? A. I would say that's so.
- Q. How about batteries? Is that true with Firestone batteries? A. No.
- Q. It is not true? A. Batteries is an entirely different business.
- Q. Is that so. What about accessories, is that different too? A. Yes, sir.
- Q. How long have you been a—that is, Biltmore, how long has Biltmore been a Goodrich distributor? A. I'm not sure. I think we are going on thirty years.
  - Q. As the— A I know we have got our twenty-five year plaque on the wall and I'm not sure if it's longer than that.

Q. Well, my question was, as a designated supply point now, for Texaco stations? A. Well, I guess as long as the Texaco Company has the program.

Q. I see. There has been no difference in your operations (4890) before or after that? A. Of course not. We are calling on some of these people for thirty-five years. They are still customers of ours.

Q. Do you receive any notice from Texaco as to the opening of new Texaco stations? A. I think B. F. Goodrich has notified—is notified and they notify us.

Q. You are notified by the home office? A. By B. F. Goodrich.

### Lawrence Starr, for Respondents-Cross

Q. Do they have a branch here in town? A. They have

a-yes, they do.

Q. Do the home office, that is, Goodrich home office salesmen accompany you in selling to Texaco stations? When I say you now, I mean your order salesmen. A. Not generally, no.

Q. Do they on occasion? A. No. I would say—we have run into them, you know, if I make a call a Texaco salesman may be there at the time I'm calling on the sta-

tion, but making joint calls with our men, no.

Q. You are referring to Texaco salesmen now? A.

That's what you asked.

Q. No, I thought I asked you whether or not Goodrich home office salesmen— A. Oh, I misunderstood you. At times. New business.

(4891) Q. That would include Texaco stations, would

it? A. Yes, sure.

- Q. Are you familiar with the reporting procedure in connection with the sales commission that's paid by Goodrich to Texaco? A. I don't think I am. I don't know what you mean.
- Q. Do you report to Goodrich? A. We do not, no. Goodrich comes in and takes those records themselves right off our invoices.
- Q. Somebody from the Goodrich home office comes in to your shop and takes that information? A. That's right.

Q. Do you know how often they do that? A. Once a

month I believe.

Q. I think you stated that Texaco, the aid that Texaco renders in selling, helps you in selling the Texaco stations. Is that correct? A. That's right.

Q. How much—what type of help do they give you, do you know? A. Merchandising help, displays. They have some technical knowledge as to tires, where—I don't want to reflect on the knowledge of a service station operator,

or his ability, but they may not know too much about the tire business and it takes some instruction, and I would say that the Texaco men have a little bit better knowledge of that than some service (4892) station operators.

Q. You call on your Texaco stations once a week, do

you? A. I call on all my stops once a week.

Q. And do all the other salesmen in your firm- A. We hope so.

Q. —call on them at least once a week? A. Yes.

Q. How much more often then would these stations be visited by the Texaco men! In other words, would they call on them once or twice a week and then you call on them once or twice a week? A. I don't know how often. I don't know their schedule at all. That takes up a small part of our business.

Mr. Dias: I have nothing further.

## Redirect examination by Mr. Barton:

· Q. Mr. Starr, do the Texas stations in your area and in Biltmore's area generally which don't handle, do not handle, Goodrich, but handle Firestone, handle Firestone exclusively? A. No.

Q. In other words, they handle brands other that Firestone? A. Yes, sir. There isn't one station that's exclusively with Firestone or Goodrich in Chicago. I'd go

on the record as to that.

(4894) FRED OPOCENSKY was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

### Direct examination by Mr. Royall:

Q. Will you state your name, sir? A. Fred Opocensky.

Q. By whom are you employed, Mr. Opocensky? A.

The Texas Company.

Q. And where is your place of employment? Where do you— A. Grand Island, Nebraska is my headquarters.

Q. And what is your present position? A. District

sales representative.

Q. What territory do you cover? A. Well, it's a section that runs from Grand Island west about one hundred miles and southeast about two hundred miles. I have four-teen wholesale points in that area.

Q. What states does it touch? A. All of them in Nebraska, sir.

Q. Now, what are your responsibilities in that position?

A. Well, I am responsible for sales, operations, accounting matters, credits and collections.

Q. How long have you held that position? (4895) A.

Since January 1, 1958.

- Q. What was your position prior to that time? A. Zone manager, headquartering at Grand Island, with a different territory.
- Q. What territory was that? A. Well, I had Grand Island, which was a salary bulk plant, and I had seven other wholesale points.

Q. Now, under—and how long did you hold that position! A. Approximately eight and a half years.

Q. Now, how long have you been with the Texas Company? A. Well, I finished twenty-five years this month.

Q. In the position you held prior to your present position, who worked—what was the sales organization under

you? Who reported to you! A. When I was zone manager at Grand Island?

Q. Yes, sir. A. Well, I had the—I had two salesmen in Grand Island, and I had the salaried employees of the bulk plant which consisted of agents, drivers and so forth.

Q. Now, in that capacity did you come in contact with the salesmen and with the service stations in your area? A. Yes, sir.

Q. Now, how frequently? A. Well, I would manage to see all of my points once a month, and service station dealers—well I'd try to see (4896) them once every sixty days, all of them.

Q. Now, in your present position, your recent position, do you have less contact with your calesmen and— A. I

have no salesmen now.

Q. You have less contact with the stations, do you, sir—service stations—or more? A. Well, I would have the—I would have the same amount of contacts, but I have more territory now, which would mean that I would not contact them as frequently as I did before.

Q. I see. Now, are you—I would like to hand you copies of Respondent's Exhibits 14, 15, 16 and 17, which have already been introduced in evidence, and ask you to glance

over them, please, sir.

The Witness: Yes, sir, I recognize them and am familiar with each of them.

### By Mr. Royall:

Q. Are you familiar with that portion of these papers that relate to the independence and freedom of choice of Texas (4897) dealers in the purchase of TBA? A. Yes, sir.

Q. Is that duty—is that policy brought to the attention of the salesmen and serves stations in the area which you serve? A. Yes, sir.

Q. Is it well known to those dealers? 'A. Yes, sir.

Q. Do the dealers conduct their operations in accordance with that policy? A. Yes, sir.

Q. Now, to your knowledge have—has there been any—have there been any instances in your territory of any coercion or forcing by Texas Company of service stations' purchase of TBA! A. No, sir.

Q. Have any—have you heard in your—in the performance of your duties, have you heard of any such forcing or coercion? A. No. sir.

Q. Does the same apply to threats? Have you heard of any threats or do you know of any threats against service stations by the Texas Company in connection with TBA? A. No, sir, I have never heard of any, nor do I know of any.

Q. Have you heard or do you know of any instances in which the—a service station has been treated less favorably because of any circumstances arising out of TBA? (4898) A. No, sir.

Q. Do you know of any instances where any lease has been cancelled or threatened to be cancelled by reason of any facts connected with TBA? A. No, sir.

Q. Are you familiar with Exhibit 209-A-Z-10, that being an exhibit of the Complainant, described as the Through-Put? Do you know what information that is based on? A. Yes, sir.

Q. What? A. Well, it's based on sales figures furnished by the dealer covering his gasoline sales, his motor oil sales, his lube jobs, and his sale of TBA merchandise.

Q. Do you know what the purpose of that report is? A. Yes, sir.

Q. What is it? A. Well, it's of great assistance to the salesmen in helping the dealer to improve his to improve his sales and make him a more successful dealer. It will point up-point out any weakness.

Q. Does it—does that—does that purpose cover both sponsored and non-sponsored merchandise? A. Covers all

merchandise.

Q. Is this report used in any way, as has been suggested by others, in any way as a policing of TBA? (4899) A. Absolutely not.

Q. I see. Has it ever been used to determine a quota

of TBA? A. No, sir.

Q. Has it been used in any way to call attention to any dealer for the purpose of promoting or encouraging further TBA sales? A. That is the way that we used it, yes, sir.

Q. Has it been used in that connection—in connection

with sponsored sales! A. All merchandise.

Q. All merchandise? A Yes.

· Q. Now, you mean all merchandise, whether sponsored

or unsponsored? A. Yes, sir.

Q. Does the total TBA sales, regardless of whether sponsored or unsponsored affect the success of a dealer? A. Yes, sir.

Q. And is it related directly to the amount of gasoline

sales that may be expected? A. Very definitely.

Q. I see. And is that the purpose of this document?

A. Yes, sir.

Q. Now, in your during your time during the time . when (4900) you have had an opportunity to see the stations in your area, have you observed whether there are large amounts of non-sponsored merchandise in the Texas stations? A. Would you state the question again?

Q. Are there non-sponsored items, TBA items, in the Texas stations? A. I have never seen a station in twenty-

five years that did not have non-sponsored merchandise in it.

Q. Is that non-sponsored merchandise displayed? A. Yes, sir.

Q. Do you know of—has it come to your attention or have you heard of any instances where the Texas Company has requested that there be no display or that the goods be concealed? A. No. sir.

Q. Or do you know of any instances where the display of merchandise, of non-sponsored merchandise, has been the cause of any discrimination against a station by the sale on Zaloudek was cancelled? A. No, sir.

Q. Now, do you know a gentleman named Zaloudek? A. Yes, sir.

Q. What is his full name, do you know? A. I just know his first name, which is James.

Q. He was formerly a Texas dealer in Omaha, was he not? A. Yes, sir.

(4901) Q. And later was he a Mobile Oil dealer? A. Yes, sir.

Q. And is he now no longer a dealer of any oil company? A. (No response.)

Q. Is he now a dealer of any oil company?

The Witness: I believe that he is no longer a dealer of any oil company.

#### By Mr. Royall:

Q. Are you familiar with the time when the lease of sale on Zaloudek was canceled! A. No, sir.

Q. You are not familiar with those circumstances? A. No, sir.

Q. Did you ever have any conversation with Zaloudek about the policy of the Texas station? A. Yes, sir.

Q. Will you give us what that conversation was? A. In 1948, when I was headquartering in Omaha, we had a new station under construction at 13th and Deer Park, and Mr. Zaloudek contacted me to learn the details of what the lease of the station would consist of, and so forth, and to ask for my recommendation to help him get the station. I did these (4902) things, and at that time discussed our TBA policy, and even helped him to get a Firestone set-up.

Q. Were you the one that helped him get that set-up?

A. Yes. sir.

Q. And what was said at that time about the policy of the Texas Company in connection with TBA? A. Well, to the best of my recollection, as I remember it, I discussed the fact with him that we recommended handling of either Firestone or Goodrich, but that he was a free agent and at that time it was his choice to handle Firestone.

Q. Now, at that time was Zaloudek told that he could buy from no one except Goodrich or Firestone? A. No, sir.

Q. And, your Honor, in that connection I refer to page of the transcript 1456-1457, I believe at the time he got this station, what-do you know what his preference was before he signed his lease, his preference as to the product to be - A. The TBA product?

Q. TBA product. A. Firestone very definitely.

Q. Was that his definite idea? A. Yes, sir.

(4903) Q. With reference to 1462, did you at any time tell Mr. Zaloudek that he could not display any of his TBA products, including A. C. Puralator, wicks, Hastings filters, and others? A. No. sir.

Q. Did anyone tell him that in your presence? A. No,

eir.

# Fred Opocensky, for Respondents-Direct, Cross

Q. With reference to pages 1463 and 64, did you or anyone in your presence, or within your knowledge, ever tell Zaloudek to remove Armstrong tires or any other brand of tires from his tire rack? A. No, sir.

Q. Did you at any time, or did any one in your presence or with your knowledge, tell Zaloudek that he had a Firestone contract and that was what he was supposed to have

in his racks? A. No, sir.

Q. This refers to 1464, your Honor.

Did you tell Zaloudek to take off of his shelves his TBA purchased from Silas Company, Al's Auto, or Storz Supply Company, or purchased from any other source? (4904) A. No. sir.

Q. Did any one so tell him in your presence or with your knowledge? A. No, sir.

Q. This relates to 1471, your Honor.

Did you ever tell Zaloudek that he was not supposed to have any TBA other than Firestone on his shelves? A. No, sir.

Q. Did any one in your presence or with your knowledge so tell him? A. No, sir.

Q. This refers, your Honor, to 1472.

Did you at any time tell Zaloudek that you did not want any Goodyear, Siberling, U. S., or any other brand of tires in his station, on the wire racks, on the floor of the station? A. No, sir.

Q. Did any one else tell him that in your presence or with your knowledge? A. Ne, sir.

# Cross examination by Mr. Dias:

Q. How often did you visit Zaloudek? A. Well, not too often. At that time I was covering the (4905) entire state of Nebraska, and I had no connection with his station, with the exception of helping him to get it.

# M. A. Buntz, Recalled, for Respondents-Direct

(4910) M. A. BUNTZ was thereupon recalled as a witness for the Respondent and, having been previously duly sworn, testified as follows:

# Direct examination by Mr. Royall:

Q. Mr. Buntz, I believe you testified yesterday at page 2530 and 2531 that 50 per cent of the Texaco stations with whom you dealt carried some stock of non-sponsored tires. You later testified that you considered—later you spoke of Goodrich when you were discussing non-sponsored tires.

In connection with that 50 per cent, did you intend to include Goodrich as a part of the non-sponsored (4911)

tires! A. No, sir.

Q. Now when you testified about 50 per cent of the stations carry some stock of non-sponsored batteries, did you mean to include Goodrich as a non-sponsored—that is, Goodrich batteries as non-sponsored batteries? A. No, sir, I did not.

Q. When you were speaking of 40 per cent of TBA as a whole as non-sponsored, did you mean to include Goodrich among the non-sponsored products? A. No, sir, I did not.

Q. I believe you did testify later on page 2551 as fol-

lows:

(4912) "Q. Would Goodrich be, so far as you are concerned, a non-sponsored product?

"A. Well, yes, it would be to answer your question."

Now that is some pages later than the other testimony. How do you reconcile that statement with your previous statement that you did not consider Goodrich among the non-sponsored products in arriving at your percentage?

### M. A. Buntz, Recalled, for Respondents-Direct

Mr. Dias: Your Honor, I want to object again. That is right in the heart of the cross examination and I think it is improper to bring this witness back at this time.

Hearing Examiner Kolb: He is changing his testimony for what it is worth.

Mr. Dias: I would assume it would be worth quite a bit from the point of view of having had an opportunity to study the record.

Hearing Examiner Kolb: I think from your point of view you would rather have him contradict himself.

Mr. Royall: These notes I am reading from are counsel's, and I am calling this to the Court's attention because I think the whole picture should be before the Court. Of course if he objects to that (4913) question and doesn't want him to answer it, maybe it is immaterial, but I think it would be better if he would say what he meant there because there is a misunderstanding.

Hearing Examiner Kolb: He testified that Goodrich was a non-sponsored product as far as he was concerned.

Mr. Royall: I read that testimony, yes.

Hearing Examiner Kolb: You can go on from there if you want to.

#### By the Witness:

A. What I meant was that Goodrich is competition but that was not included as the percentage of the non-sponsored products in the stations that I had reference to when it was brought up.

Roger Wilson, Jr., for Respondents-Direct.

### By Mr. Royall:

Q. For example, in the case of the 50 per cent figure as to tires and batteries, in the 50 per cent of sponsored, did you include Firestone and Firestone only, or did you include both of them?

Mr. Dias: I object to the double question, your Honor. I don't know which way his answer will apply.

Mr. Royall: I will withdraw that question. I

think he has already stated the situation.

(4914) ROGER WILSON, JR. was thereupon called as a witness for the Respondent, and, having been first duly sworn, testified as follows:

# Direct examination by Mr. Royall:

Mr. Royall: Your Honor, Mr. Wilson and Mr. Buntz both work for Firestone. I will take the liberty of shortening this examination as much as possible in order to avoid any unnecessary duplication.

# By Mr. Royall:

Q. What is your position, Mr. Wilson?

Hearing Examiner Kolb: Let's have the witness' name.

### By Mr. Royall:

Q. Will you give your name? A. Roger Wilson, Jr.

Q. For whom do you work, what position do you have, and how long have you had it? A. Manager of TBA sales, Omaha District, Firestone (4915) Tire & Rubber Company.

# Roger Wilson, Jr., for Respondents-Direct

Q. How long have you had that position? A. Eleven years and six months.

Q. Has that position- A. Sir-

Q. What is that? A. You asked on that position?

Q. Yes. A. No, two and a half years on that position.

.Q. What position did you hold before that? A. What they called a territory salesman.

Q. Where was your territory? A. Northwest Iowa.

Q. How long did you have that position? A. Eight years.

Q. Your service in the two positions was approximately

eleven years, is that right, sir? A. Right.

Q. Now, Mr. Wilson, did your duties in those two positions bring you in frequent contact with dealers and their stations? A. Yes, sir.

Q. In the second position your territory was larger, was

it? A. It was.

(4916) Q. During that period did you know of or hear of any pressure, coercion, or forcing on the part of the Texas Company in connection with dealers in TBA? A. No, sir.

Q. Did you hear of any threats of cancellation or discrimination? A. Never.

Q. Do you know whether or not the Texas dealers in that area considered themselves independent?

Mr. Dias: I object.

Hearing Examiner Kolb: Objection sustained.

#### By Mr. Royall:

Q. Did you ever have any conversation with dealers as to the strike that.

Are you familiar with the supply houses of Anderson and Storz and Seidel's in the Omaha area? A. Yes, sir.

#### Roger Wilson, Jr., for Respondents-Direct

Q. What type of business in general do they do? What is their primary business? A. I consider them as what we have been talking of, a hard parts company, some TBA.

Q. Are they also interested in their business in electrical and mechanical work and products? A. To a greater extent than they are in the TBA.

- (4917) Q. Do you know, Mr. Wilson, whether you render types of services and quantities of service to these Texas dealers which are not rendered by these distributors I have mentioned? Do you know whether you render some that they do not? A. Yes, sir. You would have to—yes, sir.
  - Q. You do know? A. Yes, sir.
- (4919) Q. Will you answer that question, sir, what types and quantities of service you render that these other distributors do not? What is the difference? A. We have, as I said earlier, greater TBA stocks and we render a specialized service as far as this TBA in the Omaha district to service stations.

Q. In what way! A. By delivery, stocks, promotions, programs, advertising campaigns to a greater extent than any of these other suppliers that have been mentioned.

- Q. Do you know from your experience in connection (4920) with TBA sales whether normally a salesman can make a sale the first time he calls on a customer? A. Very seldom, sir. I would say it would take an average of five to six calls and oftentimes many more before you can get a competitive account sold.
- Q. Do you know Ted Carroll, a dealer named Ted Carroll? A. I did, sir.
  - Q. Did you have dealings with him? A. To some extent.

#### Roger Wilson, Jr., for Respondents-Direct

Q. Did you at any time make any statement to Carroll that he was obligated to buy Firestone tires and could not buy Century tires! A. No, sir.

Q. Did you make any threat to him by reason of the pur-

chase of tires other than Firestone? A. No, sir.

Q. Did he ever say to you at any time, to you personally, that you had threatened him? A. No, sir.

Q. Do you know whether or not, in fact, Carroll did buy

non-sponsored tires? A. Yes, sir.

Q. Did you see them in his station? A. Yes, sir, I did. (4921) Q. What type were they? A. Century tires.

- Q. How recently was that that you saw them? A. At least a year ago or within eighteen months.
  - Q. Do you know Ralph Linton? A. Yes, sir.

Mr. Royall: Your Honor, the other one referred to page 1397 and this one refers to page 1415.

#### By Mr. Royall:

- Q. Do you know a dealer named Ralph Linton A. Yes, sir.
- Q. During this year or earlier did you see any Exide batteries on display in his store? A. Yes, I did.

Q. Did you see any other unsponsored goods? A. Yes,

Q. Did you see any products that are normally sold by Anderson & Company or could you identify them? A. Yes, I could. I think there were spark plugs and mufflers and tail pipes.

Q. Did you see any sold by Storz, normally sold by Storz? A. Yes, sir.

- Q. Did you see wiper blades, non-sponsored wiper blades! (4922) A. That is right, I did, sir.
- Q. And brake lining, unsponsored brake lining? A. Yes, sir.
- Q. Are they all stocking items as you call them? A. Yes, they are.

Q. Did you make any complaint or threat at any time to Mr. Linton about those matters! A. No. sir.

Q. Has there ever been any agreement and understanding to your knowledge that Firestone would lay off trying to sell Goodrich dealers, Goodrich sponsored dealers, or that Goodrich would lay off trying to sell Firestone sponsored dealers? A. No, sir, in fact—

Q. Do you lay off? A. No, we do not.

- Q. You have made joint calls, have you, with Texas representatives from time to time? A. Yes, sir.
- Q. On any of those occasions have you heard a Texas representative ask removal of non-sponsored goods on display? A. No, sir.

Q. Or the concealment of them? A. No, sir.

# (4923) Cross examination by Mr. Dias:

Q. Mr. Wilson, what is Ralph Linton's trade name, is that R&R? A. R&R Texaco, 33rd and Q.

Q. What items were they that you saw in there that were obtained from Anderson, Storz, and the other suppliers? A. Several of those handle the same items and it is hard to pinpoint whether they come from one supplier or the other, but ANCO blades and Champion spark plugs, A-C filters, Gridley brake lining, Exide batteries, and some chemicals that I can't specifically name.

Q. They are carried by a number of those competitors,

are they? A. Yes, sir.

Q. So that when you testified that they came from Anderson or Storz, you didn't mean to imply that you knew that it did come from Anderson or did come from Storz; you thought it came from one or the other?

Mr. Royall: Objection, your Honor. The question was whether they normally were carried by them, not whether they came from them.

(4924) Hearing Examiner Kolb: This is cross examination, Mr. Royall.

Mr. Dias: Read the question, please.

(The reporter read the question as follows:

"Question: So that when you testified that they came from Anderson or Storz, you didn't mean to imply that you knew that it did come from Anderson or did come from Storz; you thought it came from one or the other?")

By the Witness:

A. Yes, sir.

#### By Mr. Dias:

Q. You also mentioned that they carried them in stocking quantities. What is a stocking quantity of—well, take any one of these items you mentioned. A. That varies on turnover and station, and in this case those fellows do a pretty good job of mechanical work or do mechanical work, so they carry, I would say, a half dozen sets of brake linings and normal stocks of spark plugs. I mean, that is a good turnover item in any service station. 20 batteries, say,

Q. What is the Firestone spark plug, Champion, is it, or A-C? A. A-C and Auto-Lite; there is Auto-Lite, too.

Q. Firestone also sells Auto-Lite, is that correct? (4925) A. Yes.

Q. Now of the items that you saw in there, in the spark plugs, for example, did you mention spark plugs as some of the items that they purchased from other sources? A. Yes, sir.

Q. And were they Auto-Lite and A-C spark plugs? A. Yes, sir.

Q. How did you know that they came from other sources! A. Well, on one particular call I asked why we

weren't selling him more spark plugs, and I found out at that time competitors were selling the spark plugs that he had on his shelf.

Q. Could you tell us when that was? A. Last summer, last fall.

Q. 1957! A. Right.

Q. How often do you go out with Texaco representatives calling on Texaco stations, with Texaco representatives? A. It varies. You might say whenever the opportunity presents itself, or do you want an average of how often, how many times a month, or something like that?

Q. Well, do you have a fixed schedule for going out? A.

No, sir.

Q. And if you don't have a fixed schedule, how often (4926) roughly does it occur as a routine thing? A. Twice a month.

Q. Twice a month, and you visit all Texaco stations, is that correct? A. As many as time permits.

Q. How many are there in the Omaha area? A. About 45.

Q. Do you call on all Texaco stations? A. No, sir.

- Q. Which ones do you call on? A. Primarily we call on the ones that we are selling and any of the competitive stations that we would like to work on at that time, Texaco stations.
- Q. In other words, those Texaco stations that are handling competitive products in TBA products, is that correct?

A. Yes, sir, we do call on them.

#### By Mr. Dias:

(4927) Q. Did you say you were in Omaha for two and a half years as TBA sales—what was the title? I missed

that. A. Manager of TBA sales in the Omaha District.

Q. And that would then include Lincoln, is that so? A. That includes Lincoln.

Q. You have had that position for two and a half years?

A. Yes, sir.

Q. During that time you visited these stations in Omaha and Lincoln, is that correct? A. Yes, sir.

Q. Prior to that time you were territory salesman in northwest Iowa? A. That is right.

Q. You wouldn't get over into Omaha and Lincoln at that time, would you? A. No. sir.

Q. So that your experience in Omaha and Lincoln is restricted to the last two and a half years? A. Right.

Q. How many Century tires did you see in Carroll's Texaco, and when was that? A. I can't give you a definite number on how many I saw.

(4928) Q. Do you recall that it was a stocking quantity? A. A stocking quantity could be defined again as to the turnover. Some dealers are required to stock a good many more than others, but that dealer was handling some Century tires and I recall seeing—it might have been two, three of a dozen.

Q. Can I suggest to you that it was two and that it was an order for a specific customer? A. It could be, it could very easily be, but is there a date or something on it?

Q. I am going to ask you for the date. You are the one that saw them. A. I think, like I say, I answered that within the last eighteen months, a year to eighteen months ago.

Q. And at that time do I refresh your recollection that the number of tires, Century tires, was two and that they were on specific order for a customer? A. I can't say that it was two, sir.

Q. Can you tell me then how it come about that you noted them there? A. Yes, sir, that is my job, to see, to watch all competition, to see what they are putting in the stations.

#### JA 1559

# Roger Wilson, Jr., for Respondents-Redirect

Q. What else did you note in the station at that time? Just Century tires? (4929) A. No, he had—I can't specifically tell you. You see, tires are a mighty big item in a service station, as far as that goes, but he had chemicals and some accessories that we weren't selling. We were not selling the man a very big share of his TBA and that is one reason I went down there with a supply point salesman trying to find out if we couldn't get the man doing a bigger job with us.

Q. What sort of business was he doing with you with tires, do you recall? A. I can't give you a dollar volume.

I can give you an estimate.

Q. Is it your recollection that he was giving you the majority of his Firestone business? Wasn't that his primary line? A. Yes, sir, I would say that it was his primary line.

Q. Isn't that true also of Linton, aren't Firestone tires Linton's primary line, R&R! Aren't Firestone tires his primary line! A. Yes, sir.

Mr. Dias: I have no further questions.

# Redirect examination by Mr. Royall:

Q. How often did Texas representatives go with you on these visits to stations, what per cent of the time?

(4930) Q. What part of the time did they go with you? A. 15 to 20 per cent of the time.

PAUL B. HICKS was thereupon called as a witness for the Respondent, and, having been first duly sworn, testified as follows:

# Direct examination by Mr. Royall:

Q. What is your name? A. Paul B. Hicks.

Q. By whom are you employed? (4931) A. The Texas Company.

Q. In what capacity? A. District sales representative,

merchandising.

Q. How long have you served in that capacity? A. Approximately eighteen months.

Q. Before that what was your job? A. Merchandising

salesman.

Q. In what territory? A. I had the western suburbs

of Chicago.

Q. What does your territory now include? A. My territory now includes from 12th Street in Chicago south to 79th Street in Chicago; west to Mendota, Illinois and south to Kankakee, Illinois.

Q. How many Texas stations are there in that terri-

tory? A. Under my supervision, sir?

Q. Under your supervision. A. 89. Q. Do most all of them carry TBA? A. Yes, sir.

Q. How many of those stations are Texas sponsored stations, approximately—I mean Firestone sponsored stations? A. Firestone sponsored, I would say 40 per cent.

Q. How many are Goodrich sponsored? (4932) A. I

would say 55 per cent.

Q. Are some of them split stations? A. Yes, sir.

Q. The rest are split stations? A. Yes, sir.

Q. Are some of those stations where Firestone is the sponsor and Goodrich the sponsor, and some of those are split stations? A. Yes, sir.

Q. That is what you meant? A. Yes, sir.

Q. Are you familiar with the policy letter, Exhibit 10, which was issued by the Texas Company? That is Respondent's Exhibit 10. A. Yes, sir, I am.

Q. Do you recall the statement as to the independence

of the dealers! A. Yes, sir.

- Q. Did any Texas superior of yours ever discuss this policy letter with you and, if so, who was it? A. Yes, sir, they did. When I was a sales trainee first starting with the Texas Company during conferences that I had with the superintendent of sales training, we talked about TBA and the TBA policy of the Texas Company, and during those conversations I asked him (4933) how this merchandise got in there or what the Texas Company's policy was, and he explained to me the policy and also the fact that these men were independent businessmen and they had the right to choose the products that they sold, even though we had a policy, and that anyone that strayed from this policy was liable for dismissal.
- Q. You say that was when you were earlier with the Texas Company? That was a policy letter similar to this but earlier than December, '55, was it? A. Yes, sir.
- Q. Now— A. Sir, what I mean is this: The policy of the Texas Company was explained to me as that, not that particular letter.

Q. Not this particular letter, I see.

Do you carry this policy letter with you in the transaction of your business? A. Yes, sir, I do, and all Texas Company salesmen in our business do.

Q. Have you got one with you? A. I have one in my

folder.

Q. Will you go and get it and show the foreman how

you carry it? .

In order not to encumber the record with (4934) repetition, is it correct that you carry it in a cover, covered by plastic? A. Yes, sir.

Q. And that is to prevent—that is to preserve it so it won't be worn? A. Absolutely.

Q. You keep that with you all the time during the transaction of your business! A. Yes, sir.

Q. And so do your salesmen! A. Yes, sir.

Q. Now do you carry out that policy in your operations? A. I am sorry, I didn't hear you.

Q. Do you carry out that policy in your dealings with

customers? A. Absolutely.

Q. Do you know of any instances where your salesmen have violated that policy? A. Absolutely not.

Q. Who sells the merchandise, that is, the TBA, to the service stations in your area? Is it sold by Goodrich and Firestone? A. Yes, sir.

Q. You recommend it, do you? (4935) A. We do.

Q. Do you know whether or not the dealers themselves have knowledge of this policy! A. Yes, sir, they do. .They are told the policy.

Q. Do you know of any instances where they have vio-

lated it? A. I don't understand the question.

Q. I mean have you any instance where any of your salesmen violated the policy? Do you know of any instance? A. The Texas Company's policy?

Q. Yes. A. No.

Q. Have any leases in your territory, either your present territory or regional territory, ever been (4936) terminated for reasons relating to TBA? A. Absolutely not.

Q. Has any TBA situation affected in any manner your assistance to the station in the way of improvements or loans or any other way? A. No, sir.

Q. Do you know of any instances of threats made to dealers by reason of their TBA habits? A. No. sir.

Q. When you recommend TBA to Texas service stations, what do you stress and what do you discuss with the

dealers? A. I think the primary thing that we discuss in talking of TBA is the importance to the dealer of being in a TBA program as far as a source of supply is concerned. We usually go on the basis of who can give the best service, the quality of the products, and the price, the competitive situation, local acceptance in a given market.

Q. What next? Anything else, or is that the extent of your discussion? A. I think that is the extent of it, yes,

BIT.

- O. What is your evaluation of the service rendered by Goodrich and Firestone in the TBA business? A. The service rendered to our dealers in different (4937) locations with different companies can be tremendous. A service station dealer today depends a great deal on other products than petroleum products. Goodrich and Firestone salesmen and their sales people are experts in teaching these men how to sell these products, teaching these men how to make additional profits through the sale of these products, and it is for these reasons, besides display purposes, that they are of such great value to our dealers.
- (4938) Q. What is your opinion as to the relative merits of Firestone and Goodrich on the one hand and other tires on the other hand in connection with quality, service and the other factors that go into the sale of tires? A. Well, sir, let me say this: I can only say for the particular area that I am concerned with, and in that particular area I would say that Firestone and Goodrich are far superior to any other TBA suppliers in service and public acceptance.

Q. Has it been your business, a part of your business, to determine as nearly as possible how much TBA, whether sponsored or unsponsored, the various service stations sell?

A. I am vitally interested in that, yes.

Q. Why are you interested in that? A. From the dealer's standpoint or from the company's standpoint?

Q. Both, either standpoint. A. Well, from the dealer's standpoint because again (4939) to be successful he must be actively engaged in the TBA business. Many of our dealers are in the TBA business but they are not actively in it, and one of the primary functions of the merchandising salesman or representative with the Texas Company is to help the dealer increase his business.

From the company's standpoint we are interested in it because we want a strong dealer organization and we know that to have a strong dealer organization they must be strong in all captions of service station activities and operations.

Q. Does the success of TBA sales tie in and is it related to the sale of gasoline? A. Yes, it is in many instances; it is, yes.

Q. Your prime interest is the sale of gasoline, is it not?

A. It is, petroleum products.

Q. Petroleum products, yes.

And for that reason have you observed carefully the sponsored and non-sponsored goods both in the various Texas stations in your area? A. Yes, sir, I have.

- Q. Based on that observation in the periods that you have mentioned for your service, have you an opinion as to the per cent of non-sponsored tires in relation to (4940) the entire stock of tires carried by the Texas stations as a whole in the area you serve? A. I would say that possibly 30 per cent of the total tire business is non-sponsored.
- Q. Would that figure be larger if retreads were considered? A. If retreads were considered as part of the line?

Q. Yes. A. Yes, sir, very much larger.

Q. What would be the percentage in your opinion of unsponsored or non-sponsored goods if you considered

retreads and regular tires, too? A. I would say 65 to 70 per cent of our stations carry non-sponsored tires.

Q. You are speaking now of the number of stations,

not the quantity? A. I am speaking of the number.

Q. I think in a previous question you left the impression you were speaking of the quantity. You are speaking of the number of stations, and that is what I asked you about? A. The number, you.

Q. Retreads are in the Goodrich line, are they? A.

Yes, sir.

Q. And the Firestone line? (4941) A. Yes, sir.

Q. When you were speaking of sponsored and non-sponsored, you were considering Goodrich and Firestone to be sponsored and all other brands non-sponsored, is that right? A. Yes, sir.

Q. Are retreads a growing product today? A. Yes, sir, they are. Goodrich and Firestone now have a new tire warranty or guarantee on retreads, and that is a comparatively new things, and therefore makes the sale of retreads much more important that it has been in the past.

Q. They are becoming an important part of the spon-

sored line then, are they? A. They are.

Q. Now I want to ask you the same question about batteries. What percentage of the Texaco dealers in your territory stock and display non-sponsored batteries? (4942) A. I would say approximately 40%.

Mr. Dias: Will you repeat that answer, please? Forty per cent of what?

The Witness: Forty per cent would stock non-

sponsored batteries.

Mr. Royall: Mr. Dias, for your information, we don't mean exclusively; we just say they are non-sponsored—they display non-sponsored batteries.

#### By Mr. Royall: .

Q. Now, in the matter of accessories, what is your estimate of the percentage of Texaco dealers in your territory which carry accessories? A. 100%.

Q. You mean non-sponsored accessories? A. Non-

sponsored accessories.

Q. Have you at any time seen a single Texas service station in your territory that was not handling some non-sponsored accessories? A. Have I ever seen a Texaco station that was not handling non-sponsored—

Q. That was not handling non-sponsored. A. I have

not:

### (4949) By Mr. Royall:

Q. All right, sir. Can you give an estimate of what you

think is reasonable? A. Yes, sir.

Q. Now, what percentage of the total TBA sold in Texas stations in your area is non-sponsored—accessories in your area is non-sponsored? A. The total accessory sales that are non-sponsored?

Q. Yes, the percentage of them. A. I would say be-

tween 80% and 85%.

Q. Now, what would you say as to the percentage of to-

tal TBA? A. Percentage of total TBA?

Q. That is, of the total of the—the percentage of non-sponsored TBA, that is, tires, batteries and accessories, in relation to the total. A. I would say 65% of the total TBA volume is non-sponsored.

Q. Now, may I ask you whether to your knowledge the Texas Company has participated in any way in any arrangement by which Goodrich Company will not seek to sell tires and (4950) batteries and accessories to stations

which sponsor Firestone? A. No, sir. That's obvious by their sales figures.

Q. And is the same true as to—in reverse, as to Firestone and Goodrich? A. Yes, sir.

Q. Are the two, Firestone and Goodrich, competitive in your area? A. I would have to—

Q. Do they compete? A. Are they competitive?

Q. Yes. A. In prices, or-

Q. I mean, do they compete with each other? A. Yes, sir, they compete with each other,

Q. And does each of them sell TBA to stations spon-

sored by the other? A. Yes, sir.

- Q. Now, what service does-if any-does the Texas Company through your part of the organization or otherwise render to service stations in connection with their TBA sales? What do you do? A. Well, sir, our primary interest in a Texaco station is to help the dealer increase his business and thereby increase his profit. Primarily we are not interested in whether he is selling sponsored or nonsponsored TBA merchandise. That (4951) is secondary with us, actually. What we want him to do is to sell some TBA. We have a program in the Texas Company that was initiated about a year and a half ago whereby we are trying to make one call per-day through merchandising salesmen on their accounts. During this one call per day these salesmen and myself, when I have the opportunity, go in these stations and go over the man's business with him. As far as displays are concerned, we set up displays; whether they're sponsored or non-sponsored, it makes no difference. We set them up, try and merchandise them properly, try and show him how to best sell those products. And in that way we reach our goal, and that's having a strong Texaco dealer.
- Q. Now, do you render that service in connection with non-sponsored goods? A. We do.

Q. Let me ask you a specific example. How many—what part of the fan belts are sponsored that are sold in your area, approximately? A. I would say 5% would be extremely high.

Q. Have you helped in the sale of fan belts to stations who handle principally non-sponsored? A. I have in many

locations.

- (4966) Q. In an earlier question I referred to the sponsorship of the stations. Do you understand that to mean that they are nominated for particular TBA sellers? How do you get a—how do you designate a station for sponsorship? What happens? A. When we have a change in dealers or a new location that's going to open, we nominate the station to both tire companies, and it is up to the tire companies to notify their individual supply points and contact this man.
- (4967) Q. And that is the extent of your operations in that connection? A. Well, yes, sir, except we counsel him on the amount of stock he buys. You have to watch these tire companies once in a while.
- Q. I understand that. But that is a sponsored station that you have designated, is that right? A. Yes.

Hearing Examiner Kolb: Is that all?
Mr. Royall: One other question.

### By Mr. Royall:

Q. Do you know whether or not, from your experience with the Texas company, it is difficult in your area to get good service station operators? A. It is almost a critical situation with us.

PAUL D. HICKS, JR. resumed the stand and testified further as follows:

Further direct examination by Mr. Royall:

(4968) Q. I think I asked you about most of the pictures. All those pictures represent lessee stations? A. Yes, sir.

#### Cross examination by Mr. Dias:

Q. I think the last question asked you just before we adjourned for recess had to do with sponsorship or nomination. Nomination is, I believe, the proper word. Since you have been only in this position a year and a half, do you have any immediate knowledge of how that is accomplished, how the nomination takes place? A. Now.

Q. No, any time you have been in your current position.

A. Yes, sir.

Q. Have you had experience with the nomination of (4969) stations to Firestone or Goodrich? A. Yes.

Q. Is that part of your current duties? A. Yes.

Q. In your current position have you nominated stations or new operators? A. Yes, sir.

Q. Have new stations been opened up in your area!

A. Yes.

Q. And you have nominated them to Firestone or Goodrich, is that correct? A. Yes.

Q. And, I take it, there have been changes of operators

during that period? A. Yes.

Q. Let us take the case of a new station; every time there is a new station opened up are they nominated to Goodrich and/or Firestone? A. Yes, sir.

#### Paul B. Hicks, for Respondents-Cross

Q. Now, in the change of operators, that is, where an old station loses an operator and you get a new one, in each of those instances do you nominate the operator to Goodrich and/or Firestone? A. Yes, sir.

Q. Are there not in your territory some stations that (4970) are not considered suitable for the sale of TBA?

A. Under my supervision?

Q. Yes. A. No, sir.

Q. There are not? A. No.

Q. All those in your area are considered suitable outlets for TBA, is that right? A. Yes.

Q. Can you tell us a little bit about this new procedure of one call per day; that is a new procedure, isn't it? A. Yes, it is new as of February 1, 1957.

Q. And what does that entail? A. At that time the Texas Company formed what they called a merchandising department and we had classified merchandising salesmen. These men are trained to assist the dealer in furthering his business interests.

Q. Yes, and I think you explained that part of it before. What I was interested in was this one call per day; does that mean that the Texaco man doing this work calls on every station once a day! A. No, sir. The program is designed, is set up so that four days a week our merchandising salesmen are only to call on one account per day. Now, in actuality it does (4971) not work that well but that is the program.

Q. How many of those salesmen do you have? A. I have five at this present time.

Q. And do I understand at the present time that each one calls on a different station, is that correct? A. They each have their own individual areas.

Q. So that in a month's time do they manage to cover all the stations in your area? A. They would because they have one day open and that day they call on more than one account.

# Paul B. Hicks, for Respondents—Cross

Q. In addition to displaying of merchandise and this type of thing, is there anything else they do at the station? Do they have any other duties? A. Yes, they counsel the dealer on all phases of his business and his operation, circle service, house keeping, cleanliness.

Q. I take it that you don't personally get around to these stations in your area too often since there are 89 of them. Am I right in that? A. No, not completely. I am almost constantly in the field with salesmen and with-

out them.

Q. And do you see each and every one of those 89 frequently? A. By "frequently" I don't know what you mean

but I see the 89 stations often, we will say.

(4972). Q. I thought you said frequently. What do you consider frequently or often? A. I visit those stations; usually my time is spent in those stations that we feel need help, so the better service station dealers, — the more successful ones,—I do not visit as often as I do those men that are having some kind of problem, some type of problem.

Q. Can you tell us the type of problem you would be interested in? A. The main one would be lack of business.

Q. And what else! A. Bookkeeping problems, help problems, display problems.

Q. In general, are you pretty familiar with these 89

stations? A. Yes.

Q. Now, we have got into some difficulties with the percent; there are 89 stations and you stated that 40 percent sponsored Firestone; as I understand that is approximately 36 stations, is that correct? A. If that arithmetic is correct, yes.

Q. Yes; assuming the arithmetic is correct. A. Yes.

Q. And then you stated that approximately 55 percent sponsored Goodrich? (4973) A. Yes, sir.

Q. Well, roughly, that is about 50 stations, isn't it, assuming my arithmetic is correct? A. Yes.

### Paul B. Hicks, for Respondents-Cross

- Q. And also some of those stations are split stations?
  A. Yes.
- Q. Can you tell me how many of the split stations there are? A. Numberwise?
- Q. Yes. A. I would have to have a list of my service stations, the 89 of them, and I think I could tell you that way. I can't recall which of the 89, right off the bat, would be—
- Q. Can you tell us— Are there many that are split stations? A. Yes, there are quite a few.
- Q. Can you give us a rough number? A. That buy from either or both?
- Q. Right. A. I would say that there are approximately ten to fifteen.
  - Q. Ten to fifteen?

Hearing Examiner Kolb: That buy from both? The Witness: Yes, sir.

# (4974) By Mr. Dias:

- Q. Now, of the 89 are there any that do not carry any of the sponsored lines, either Goodrich or Firestone? A. I can only think of one at this time.
- Q. Now, do you make a practice of showing your service station's Texaco correspondence, intra-office Texaco correspondence? A. No, sir.
- Q. This is another one that has bothered me; we have heard about the promotion of gas with TBA, and the promotion of TBA with gas. Which is the primary purpose, to sell gasoline? A. Our primary purpose?
  - Q. Yes. A. To sell petroleum products.
- Q. And the TBA helps the sale of gasoline; it isn't the other way around. A. It could be both ways; in different locations there are some stations which are very strong TBA merchants and through the TBA solicitation to promote the sale of gasoline.

# Paul B. Hicks, for Respondents-Cross

Q. So far as Texaco is concerned they don't care what promotes the sales, — the sales of TBA or the sales of

gasoline? A. We are interested in sales, yes.

(4975) Q. On the accessories you mentioned 100 percent of the stock is non-sponsored. Is there anything wrong with the Goodrich or Firestone accessories? A. No, sir.

Q. Don't those salesmen try to sell them? A. Yes, sir.

Q. Don't they have any luck in the Texaco stations?

A. They do have luck, yes, sir.

Q. Then I take it that the 100 percent that stock non-sponsored also stock Firestone and/or Goodrich, is that not correct? A. Some of them, yes, sir.

Q. Are there any again that do not stock some Firestone and/or Goodrich accessories? A. Yes, sir, there

are some.

Q. Are there many? A. I would say they are in the

minority.

Q. So that while 100 percent stock some non-sponsored, it is equally true to say that the majority of that 100 percent also stock Firestone and/or Goodrich accessories, isn't that so? A. As far as quantity is concerned, yes.

Q. What do you mean by that? A. Dollar-volume wise there is quite a bit of difference but just individual-accountwise I would have to answer (4976) your ques-

tion: Yes.

Q. On the fan belts what is the recognized predominant brand of fan belts? A. Gates.

Q. Is that true of hose, too? A. Yes, sir.

Mr. Royall: That is all.

JOHN NEMEC, called as a witness on behalf of Respondents, being first duly sworn, was examined and testified as follows:

#### Direct examination by Mr. Lorenzen:

Q. Give your full name and address to the reporter.

A. John Nemec.

(4977) Q. Where do you live? A. 8204 S. Troy, Chicago, Illinois.

Q. Is that on the south side of Chicago? A. It is.

Q. Is that generally the same district-

Mr. Lorenzen: I will withdraw that question.

#### By Mr. Lorenzen:

Q. Is Mr. Hicks the manager of the area you are in?

A. Where my service stations are, yes.

Q. You are in the service station business, are you? A. That is right.

Q. And do you lease from the Texas Company? A. I do.

Q. At what locations? A. 8500 South Racine, Chicago, Illinois, and at 8956 South Ashland Avenue, Chicago.

Q. How long have you had leases on those stations?

A. On one, going on three years and on one, just two years, the present one. Three years at the Racine location, and two years at the Ashland Avenue location.

Q. About what is the gallonage of your stations? A. Combined, 30,000 to 35,000 gallons per month.

Q. Do you handle TBA in those stations? A. Yes, we do.

Q. Will you tell us the reasons for handling it? (4978)

A. We handle TBA to make an additional profit, also to supply our customers with their needs, mainly to make additional moneys.

Q. Do you find it helps in your gasoline sales? A. It does. They both work together. It is difficult to say which is helping which.

Q. Now, during the time in which you have been a Texaco dealer, have you had an understanding as to the Texas Company's TBA program and its TBA policy? A. Yes,

I have; it was explained to me.

Q. What was your understanding of it? A. My understanding when I went into business not at these locations, although in these locations also, but the first place I opened, was that I was an independent business man, I could run the business as I chose, selling their petroleum-products, naturally, and that I would handle a nationally-accepted TBA item and they suggested Goodrich or Firestone, as a national brand which I should be or would be satisfied with, and I chose at that time Goodrich because it happened to be in that station that I took over the management of.

Q. And you say you did understand you were an independent business man? A. Definitely, yes.

- Q. You could buy your TBA from whatever source you wanted (4979) to? A. Yes, I did.
- Q. Now, has anybody since that explanation was made to you, told you that the Texas Company didn't mean what it said and that you had to handle the Goodrich or the Firestone line? A. No; no one has ever said that.
- Q. Has anybody ever told you that your lease would be cancelled and not be renewed if you didn't limit yourself to Firestone or Goodrich TBA? A. No, I never had lease trouble.
- Q. And your leases are the regular—well, I won't say regular, but you know your leases go from year to year and renew themselves unless cancelled? A. Yes; that is right. I signed them once and they are automatically renewed to me.
- Q. And that is the type of lease you have? A. That is right.

Q. From whom do you buy your TBA, Mr. Nemec? A. From various sources. Do you want the names?

Q. Yes; would you give us the name of your principal suppliers? A. The principal one is Gardner and Kinsley, in Chicago.

Q. How about Motor Axle? A. Yes, we buy from them.

(4980) Q. And Major Motor Supplies? A. We do a good portion of our business there.

Q. And Amplus Battery Company? A. Yes, we do a great deal, exclusively in batteries, with them there. That is all they sell.

Q. And you buy quite a number from them, do you not?

A. Yes, we do.

Q. And the Tire Sales Company? A. Yes, we deal with them.

Q. What sort of tires do they sell? A. It is a U. S.-Royal dealer.

Q. And you also deal with the Wynn Oil Company and the Bardahl? A. Yes, both.

Q. Those are what is known as additive chemicals?

A. Additives, right.

Q. How about T. & T. Auto Supply Company? A. That is a man who comes to us and since he does, we do a great deal of business with him; he is handy.

Q. And you buy all sorts of TBA items.from him, do you not? A. Yes, mainly accessories since he doesn't handle tires or batteries.

Q. Do you buy some anti-freeze from him too! A. Yes; I consider that an accessory.

(4981) Q. And some spark plugs? A. Yes.

Q. Thermostant A. Yes.

Q. Now, Gardner & Kinsley sell-Goodrich TBA, among other things, don't they! A. They do, yes

Q. You buy a good many accessories from them that are not in the Goodrich line, do you not? A. Yes.

Q. Do you buy anti-freeze such as Prestone and Zerex; isn't that right? A. We buy some from them, yes.

Q. Do you get Gates fan belts and Gates radiator hose

from them? A. Some of each, Goodrich and Gates.

Q. And you buy some of the Goodrich line and some other spark plugs from them, don't you! A. Yes.

Q. And the same goes for filters? A. We don't buy

filters from him.

Q. Who do you buy filters from A. From T. & T. Auto Supply now.

Q. About how many tires do you stock? A. We stock,

between both stations, about 60 tires.

(4982) Q. And of them, there is a substantial number

which are not Goodrich? A. A few.

Q. How many, would you say? A. A small portion of them. 10 or 15 out of the 60 are not.

Q. What kind are they! A. Mainly U. S.-Royals.

Q. Are they openly stocked where they can be seen?

A. Yes, right along with the others.

Q. In the same display rack? A. Yes, we have only

one tire rack.

Q. And do you display all of your TBA openly? A.

Yes; otherwise they don't sell.

Q. Has anybody from the Texas Company ever told, you to hide any of those items? A. No; I wouldn't have any place to hide them really but they have never said it.

Q. Of all of the tires that you sell about how many do you think you sell out of stock; that is, in percent,—how many do you think you sell out of stock and how many do you get on a pickup basis? A. Well, we get—Mest of ours are on an order, on a pickup basis; percentagewise, more than 50 percent, a good 60 or 70 percent we sell by taking orders for them and (4983) then picking them up or having them delivered.

Q. So that you don't sell them but of stock? A. No, -

just occasionally.

Q. And when you place these orders for pickup or spot delivery, do you place orders for whatever kind of tires the customer wants? A. Well, that's mainly why we have to do it because in accordance to what size he wants or what price range he wants, or black or white or what make, we have to order them specially.

Q. And if he wants other than Goodrich, you order it? A. Yes, we sell those too.

Q. And you have done that right along? A. Yes, we have

Q. Now, in your batteries do you stock a complete line of your Amplus batteries? A. Yes, we do.

Q. And you also stock a line of Goodrich batteries?
A. That we do also.

Q. Which do you sell the most of, the Amplus or the Goodrich? A. The Amplus.

Q. Can you estimate about what percent of your total battery sales are Amplus and what are Goodrich! A. At one time we averaged 3½ batteries per week with (4984) Amplus and I would say about two Goodrich,—2 to 3½ Now it is probably 60-40, I would say, — 60 percent of Amplus and 40 percent of Goodrich batteries.

Q. The Amplus battery is what is known as a price battery; it is a cheaper battery? A. It is a cheaper battery but it has good quality to it.

Q. Do you get any help from the Texas Company in connection with the merchandising of your TBA? A. Yes, considerable.

Q. What sort of help do you get? A. Oh, several times a year we have dealer meetings and conferences; they do send us display material which helps in promoting the products or the service, — on several occasions, i.e., when we opened our new stations we naturally were running good business and we had to open a new one, and we didn't have too much time ourselves, so the salesmen or different

employes of the company came out to help us re-arrange our stock or set up our material.

On grand opening occasions they were there to pitch in to kelp us sell anything that was sold, or, if it was given

away, they helped us give them away, too.

Q. These suggestions you had in dealers' meetings and meetings you had, did that apply equally on TBA? (4985).

A. Yes.

Q. On page 688 of the record there is testimony by Joseph C. Arey; he is a salesman of the South Tire Service Company, and he says you couldn't buy TBA from him because you told him you are supposed to sell Goodrich. Now, tell me: Do you recall having any discussion with Mr.

Joseph C. Arey at all? A. I do, very well.

Q. Will you tell us what happened? A. He came in one day when I was very busy and tried to sell me on the Goodyear tire line and supposedly I ordered him to get out, more or less, but I did actually give him an order and that was for two tires but they never did deliver. Why, I don't know. It was going into the winter season and they were not new tires; they were the Goodyear suburbanite recap tire.

Q. The Goodyear suburbanite recap? A. Yes, I didn't stock retreads at the time. I don't now but in the winter time retread snow tires will sell and he had a competitive price and mainly he had what they call a suburbanite which Goodrich don't have. They have snow tires or snow treads but people go for the Suburbanite name and I. tanted to stock them. I ordered two tires. I didn't have anybody to sell them to for the moment but I wanted to display them. In fact, that is what they were (4986) for, and I never

did receive them.

Q. You did place an order with them and they were never delivered. A. That is right; they were never delivered.

Q. Now, another gentleman testified here at page 958 of the record, a Mr. Draymon Jennings of Jennings Auto Supply Company, and his testimony was given in January of 1957, and he said that before that time he had been in your station and you told him that you couldn't buy from him because, and he is quoting you, now: "We have to handle Goodrich, you know how it is." Can you tell me whether you recall any conversation of that type with a Mr. Jennings! A. No, I usually pride myself on remembering faces or names, or one of the two, and I didn't remember this person at all, so if I quoted a statement to him I feel I would remember him. I feel I should. I feel I didn't know who the person was up until a few months ago and I happened to meet him and it wasn't on my business property. So I would say I did not make that statement at all.

Q. In fact, you would say you had never met Mr. Jennings. A. That is right; I would say he may have been

in but he didn't talk to me.

Q. And as far as you can remember did you ever make a statement to anyone to the effect that the Texas Company (4987) required you to handle the Goodrich tire and that you couldn't buy anything else? A. No, nobody makes me do anything. The only reason I don't handle more than one line of tires is because,—now I can't possibly handle the entire line of Goodrich as there are too many sizes; I would have too much money invested and too much dead stock, and in some cases I have used the fact that I handle Goodrich and that is all I can afford to handle but not that anyone has compelled me to do so,—never.

Q. And would you feel free if you thought it would sell better, to handle some other line? A. If I thought it would sell better I would handle some other line. We are satisfied with Goodrich. Actually we sell a lot of tires and the margin of profit is 30 to 35 percent but by the time it is on the car it is so competitive I feel I am better off repairing

tires as selling them new. If I repair a man's old tires he is coming back again. On selling new tires, that is the end of it. On tires you have to have too many laying around. On other items you can sell more of them. On fan belts we sell, like you say, both, because some sizes are extremely difficult to fit to some cars. But we sell maybe 10 to 20 fan belts a week, but maybe we only sell, if we are lucky, five tires a week. Actually I (4988) I have made more on the fan belts and I have double and triple stocks, double or duplicate sets of fan belts whereas very seldom I have duplicate sets of tires.

Q. You conduct your business in the way you think you will make the most money A. Yes, that is right; I do

that.

Mr. Lorenzen: I have a picture here. May I ask the witness off the record whether he recognizes it before I introduce it? Mark this, please.

(The paper referred to was marked Respondent's Exhibit 51 for identification.)

#### By Mr. Lorenzen:

Q. I show you Respondent's Exhibit 51 and ask you whether you recognize that photograph as being one of a display of batteries at one of your stations? A. Yes.

Q. At which station? A. At the station at 90th and

Ashland.

Q. What type of battery is that? A. Amplus and Century batteries.

Q. Was any special preparation made when that picture

was taken? A. No, none whatsoever.

Q. That is just the way your station looks in the normal conduct of your business, is that right? (4989) A. Yes, although the battery display was low at the time.

#### John Nemec, for Respondents-Cross

Q. You mean you have more batteries? A. Normally the stand is filled, yes.

Mr. Dias: When the stand is filled there are some Goodrich batteries on there?

The Witness: Yes, presently there are. The stand is merely a window display stand. In fact, it is a Delco battery stand, although I do not have a Delco battery in the place and I got it some place and it makes a nice display from the inside and also from the outside. Directly across we have another display of batteries in the center of our shelving.

Mr. Dias: Does that display also contain Goodrich batteries along with these others?

The Witness: Yes.

Mr. Dias: I have no objection.

Mr. Lorenzen: I offer it in evidence.

Hearing Examiner Kolb: The document will be received in evidence.

(The photograph referred to, heretofore marked for identification Respondent's Exhibit 51, was received in evidence.)

#### By Mr. Lorenzen:

Q. Do you also have a display of both types of batteries in your other station, your 85th Street station! (4990)

A. Yes, sir.

Mr. Lorenzen: That is all.

# Cross examination by Mr. Dias:

Q. Mr. Nemec, I don't believe you gave us the trade name of your stations? A. J. & K. Service Stations.

Q. And have they always been known as J. & K. Service Stations? A. With the exception of when we had one and then it was J. & K. Service Station.

#### John Nemec, for Respondents-Cross

Q. Did you have any other trade name! A. No.

Q. You mentioned your combined gallonage, 30,000 to 35,000; in other words, roughly around 15,000 to 17,500 per station, is that correct? A. Yes.

Q. And when you make your purchases of TBA do you have them shipped to one station and then you yourself take them over to the other station, or how do you arrange that? A. Normally we order for the station that needs it and it is delivered accordingly to the individual station, but we don't keep an inventory that way. If we need something from one it is taken from there and the sale (4991) is rung up in the station where it is sold.

Q. You mentioned you never had lease trouble. Did I deduce rightly that you may have had some other kind of trouble? A. Well, you always have got trouble. We have got trouble now.

Q. In what regard? A. Well, business troubles.

Q. Sir? A. Help trouble; our main troubles are working hours and union trouble now.

Q. What about the working hours? A. Well, the schedule of your help in the work and to do a sufficient job so that we don't have to work so hard, being the owners.

Q. How many hours do you stay open, a day? A. We are open from 7 in the morning until 10 at night. That is 15 hours a day.

Q. Is that at each station? A. They are both run on the same basis.

Q. Is that your idea, to stay open those hours? A. Yes, we have to, to meet competition in the neighborhood.

Q. Do you do any repair work at your stations? A. Yes, we do.

(4992) Q. What type of repair work, light stuff or do you go into heavy repairs? A. No, we draw the line on heavy work. We do everything that we consider we can get out in a day, any mechanical job which is not going to

## John Nemec, for Respondents-Cross

tie itself up more than a day with the automobile or the customer.

Q. You mentioned one of these suppliers, Motor Axle?

A. Motor and Axle Parts.

Q. What do your purchases from that distributor con-

sist of? A. Supplies?

Q. Yes, what kind of supplies do you get? A. Mainly brakes, and machine work,—drum turning,—that sort of repair or service; and some mufflers and clutch parts.

Q. Ignition A. No ignition.

Q. That is generally known as hard parts? A. Generally.

Q. And the Tire Sales Company, you buy your Royals

there, is that correct? A. Yes.

Q. I think you mentioned that you buy filters at T. & T. Auto Supply now. Did you change at one time or did you buy filters at another place? (4993) A. Yes; we used to buy them at Motor and Axle, and Gardner & Kinsley.

Q. And when was that? A. Oh, about three or four

years ago.

- Q. And for how long a period? A. For about four years,—four to five years, and that was three years back.
- Q. I don't understand just exactly: When did you shift to T. & T.? A. Approximately three years ago.

Q. About three years ago! A. Yes.

Q. Returning to that conversation with Arey, do you recall that he offered to furnish the tires in question on the memo billing? A. No, I got a copy of the bill and he wrote up the bill there, whether it was a memo billing or not, and he had the quantity, two tires, and to be delivered, I don't know what day of the week, possibly the next day, I would imagine.

Q. And you never received them? A. No, we never did.

Q. Do you have Goodrich signs and balances around the premises of each station? A. Yes.

(4994) JOHN A. McGUIRE, called as a witness on behalf of Respondents, having been first duly sworn, was examined and testified as follows:

#### Direct examination by Mr. Lorenzen:

Q. Would you give your name and your address to the reporter? A. John A. McGuire. My home address?

Q. Yes. A. 1821 Jenkinson Court, Waukegan, Illinois.

Q. What is your business? A. I am a Texaco dealer.

Q. And you lease your station from the Texas Company! A. Yes.

Q. What is the location of the station? A. 1240 Waukegan Road, Glenview, Illinois.

Q. About what is the gallonage of that station? A. Approximately 25,000 per month.

Q. Do you handle TBA there? (4995) A. We do.

Q. Will you tell us why you handle it? A. Basically and honestly, I think it is just to make money, but the second time is: To fulfill the needs of our customers, too; outside of gasoline they have many more needs and we want to give a complete service for them.

Q. Do you find that your having TBA attracts people for your gasoline sales? A. It does; it definitely does.

Q. Now, during the time you have been a Texaco dealer have you had an understanding as to the Texas Company's TBA program and its policy? A. At the time I became a Texaco dealer that was explained to me. The explanation went,—the primary thing was that I was an independent business man. The only requirement they gave me was that I was to run my business in a business-like manner and have things at my station that would sell and meet the customers' needs. I was not restricted in any respect as to what I was to buy, how much I had to pay for it, or whom I was to buy it from.

- Q. You felt that you could buy your TBA from any source that you thought was best for your business? A. That is correct.
- Q. Since you have been a dealer has anyone from the (4996) Texas Company told you that that understanding you obtained at the beginning wasn't so? A. No, sir.
- Q. And that you had to buy Firestone or Goodrich? A. No one has ever said that to me.
- Q. Has anyone indicated to you that your lease might not be renewed or that the Texas Company would treat you badly in some other way if you didn't buy Firestone or Goodrich TBA? A. No.
  - Q. From what sources do you buy your TBA? A. At the present time I am buying them from the Grand Auto Supply in Waukegan. I am buying a short time from Grimm-Hanson-Treland; I am buying them from the Berry Tire Company. Basically, I believe it is those three that take care of the majority of it.
  - Q: Do you buy anything from the Bowes distributor?
    A. Yes, we do.
    - Q. They have what? A. Radiator hose and fan belts.
  - Q. Do you buy all of your radiator hose from them?

    A. All of them.
    - Q. How about fan belts? A. All of them from Bowes.
  - Q. Are those Bowes hose and fan belts displayed openly (4997) in your station? A. Yes.
    - Q. And that is marked with the Bowes name? A. Yes.
  - Q. Now, the Strand Auto Supply Company; that is not a supply point of either Firestone or Goodrich, is it? A. It is not.
  - Q. Do you buy nearly all of your accessories from them? A. Yes, sir, we do.
  - Q. What do you buy from the Berry Tire Company?
    A. Tires, tubes and batteries.
  - Q. What kind of tires? A. We buy the Dunlop, the Miller tires.

Q. And what sort of batteries? A. Auto-Lite.

Q. Do you stock some Auto-Lite batteries? A. Yes.

Q. What percent? A. At the present time it is 100 percent, just exclusively Auto-Lite.

Q. Exclusively Auto-Lite? A. Yes, sir.

• Q. And they are all bought from the Berry Tire Company? A. At the present time, yes, sir.

Q. And you display those openly? (4998) A. Yes, sir.

Q. With the names on them? A. Yes, sir.

Q. Does that go for all of your TBA; it is all openly displayed? A. Yes, sir.

Q. Has anyone from the Texas Company told you to hide it or not to display it? A. No, sir; never.

Q. Have they ever told you they would cancel your lease if you didn't stop displaying it? A. No, sir.

Q. Now, in addition to having the Miller and Dunlop tires you also have Firestone tires, do you not? A. That is correct.

Q. About how many tires do you stock at your station?

A. Oh, roughly, about 10 or 15 is all.

Q. And about what percent of your sales of tires is made out of stock and about what percent is made on a pickup or spot delivery basis? A. I would say if I were to sell 15 to 20 percent out of stock, I would be doing pretty good.

Q. So the balance, 80 to 85 percent, you order the tire as the customer comes in and orders it from you? A. That is correct.

(4999) Q. And do you get requests for different makes of tires? A. We do.

Q. When you do, do you fill them? A. We fill those needs, yes.

Q. That is irrespective of whether it is Firestone, Goodrich, or Goodyear, or anything else? A. That is correct.

Q. Taking all your TBA business together, in volume of sales, what would you say is the percent of your TBA business which is in accessories? A. 15 to 20 percent.

Q. How much is in tires? A. Roughly, 45 percent.

Q. And how much is in batteries? A. I would say about 40 percent. I mean, it fluctuates, but it is close to those figures.

Q. Close to those figures? A. Yes.

Q. Are all your Auto-Lite batteries dry charged? A. They are.

Q. That is the only kind you stock? A. Yes, sir.

Q. Do you obtain any help from the Texas Company in

merchandising your TBA? A. We do.

(5000) Q. What sort of help do you get? A. Outside of personal help from the sales representative which we are pretty fortunate we have; he is a good representative and he is out there quite a bit, and we do have display material coming from them. Outside of the display material we do have promotional ideas coming either through the mails or at these dealer conferences we have

Q. Do you find that helpful in selling both the sponsored and the non-sponsored line of TBA? A. We cer-

tainly do.

Q. Taking all of your TBA together, about how much of it, do you think, is something other than Firestone, — about what percent! A. I would say about 55 percent of it is not Firestone.

Q. All your batteries and substantially all of your accessories are not Firestone? A. That is correct.

Q. And such of the tires you sell are tires of Firestone? A. Yes.

Q. If the customer does not express distinct preference do you recommend Firestone to him? A. I do.

(5001) Q. Why is that? A. I have had experience with Firestone. I have seen other makes on many cars

and seen other customers with different makes of cars and I believe at the present time that Firestone has the best tire.

Q. You get good service from them? A. Yes.,

Q. They have a good service policy? A. Yes. ..

Q. And that is the reason you handle the Firestone tire, is that it? A. Yes; that, and the service policy is

very good.

Q. Now, I think there is some testimony in this record from this Mr. Abernathy of the Berry Tire Company. Mr. Abernathy testified in January of 1957 and what he said at page 812 was that he had sold you up to 90 days before the date of his testimony and that as of that time, and I am quoting from him: "We were just pushed out of there."

Now, will you tell me whether any change took place 90 days before this January of 1957, and, if so, what change took place, and if you pushed Mr. Abernathy out of the station? A. To my knowledge Mr. Abernathy was never pushed out of our station. As a matter of fact, we are still buying from him, so it just doesn't quite make sense to me.

(5002) Mr. Dias: I want to object to one thing. I believe in reading the context, there was no physical pushing out mentioned.

Mr. Lorenzen: I don't think there was any.

Mr. Dias: I gathered that the witness implied that you are not saying Mr. Abernathy complained about being physically pushed out.

#### By Mr. Lorenzen:

Q. 90 days before the time in 1957 did you stop buying from him whereas you had been buying from him before that time? A. No.

Q. Nothing like that happened! A. No. sir.

Q. You had been buying from him before and you have continued since? A. Yes, sir.

Q. Do you have a calendar from the Berry Tire Company posted in your station somewhere? A. Yes, sir, I do.

Q. And that advertises the name of the Berry Tire Company, does it? A. Yes, sir-it does.

Mr. Lorenzen: We haven't had any nice pictures of the Bowes line before, so let me ask to have this (5003) marked.

(The photograph referred to was marked Respondent's Exhibit 52 for identification.)

#### By Mr. Lorenzen:

Q. I show you a photograph which has been marked Respondent's Exhibit 52 for identification and ask you whether you can recognize that as a display of Bowes equipment at your station? A. Yes, sir.

Q. About when was that picture taken? A. In January

or February of 1956.

Q. Does the display still look quite a bit like that? A. Yes.

Q. Do you still have the sign Bowes and radiator hose?

Q. Was any special preparation made at the time that picture was taken? A. No.

Q. That is just the way it looked at the time the mancame in to take the picture? A. That is right.

Mr. Lorenzen: I offer it in evidence.

Mr. Dias: You said it looks quite a bit like it,

is that right?

The Witness: It is a copy of the picture taken (5004) at my station. It is changed now but it did look like that.

Mr. Dias: It is changed now?

The Witness: Yes; some of the hoses are gone, or are dirtier.

Mr. Dias: What is the location of it in your station?

The Witness: It is in the bay area ahead of the bay. In other words, anyone driving in could see it.

Mr. Dias: I have no objection.

Hearing Examiner Kolb: The photograph will be received in evidence as Respondent's Exhibit 52.

(The photograph referred to, heretofore marked for identification Respondent's Exhibit 52, was received in evidence.)

Mr. Lorenzen: Mark this Exhibit 53.

(The paper referred to was marked Respondent's Exhibit 53 for identification.)

#### By Mr. Lorenzen:

Q. I show you a photograph marked as Respondent's Exhibit 53 for identification, and ask you whether that is the type of calendar which the Berry Tire Company has posted in your station? A. Yes, sir.

Mr. Lorenzen: I offer it in evidence.

Mr. Dias: No objection.

(5005) Hearing Examiner Kolb: The photograph will be received in evidence as Respondent's Exhibit 53.

(The photograph referred to, heretofore marked for identification Respondent's Exhibit 53, was received in evidence.)

Mr. Lorenzen: That is all.

Hearing Examiner Kolb: Cross examine.

#### John A. McGuire, for Respondents-Cross

## Cross-examination by Mr. Dias:

Q. Now, in addition to these Bowes hose and Berry tires, do you also have some other advertising in and about your station especially Firestone? A. Yes, sir.

Q. Do you have some Firestone decal; do you have an outside sign reading: Firestone, showing the service that

you have? A. Yes.

Q. And various other Firestone signs and banners? A.

Yes, sir.

Q. You mentioned the principal source of the TBA supplies you mentioned Grimm-Hanson-Treland; what are they? A. They are a parts house, located three doors from us.

Q. What do they sell? A. Mufflers, tail pipes, all hard

parts for a car.

Q. They are mainly a hard part dealer? (5006) A. That is correct. They also have shelf goods, — waxes, polishes, and things like that.

Q. Do they, by any chance, handle Goodrich accessories?

A. No, sir.

- Q. Do you make any purchases from Goodrich? A. No, sir.
- Q. Have you ever made purchases from Goodrich? A. Yes, sir.

Q. Can you tell us when? A. It will take a little figuring. It was in 1957 that we purchased tires from Goodrich.

Q. You don't think that might have been back in around September or October of 1956, do you? A. We were purchasing tires at that time, too.

Q. From Goodrich! A. From Goodrich, that is true.

- Q. Will you tell us who the source of supply was; who was the distributor? A. Right out of their main office in Chicago.
  - Q. The Goodrich main office? A. Yes.

## John A. McGuire, for Respondents-Cross

Q. Did you tell us when you started in business, Mr. McGuire? A. I started in September of 1956.

Q. Was that a new station? (5007) A. No, sir.

Q. What TBA was in the station when you took over?

A. Basically the same that is in there now with the exception we did not have Firestone in there.

Q. What did you have at that time? A. Goodrich.

Q. That was Goodrich at that time? A. Yes.

Q. Was there any reason for your dropping Goodrich?

A. Yes, sir.

O. What was that reason? A. Poorer service.

Q. And when did that occur? A. It was in the early

part of 1957; let us say around March or April.

Q. Had you been in the service station business before you got this station? A. I did not own a station; I was employed in one.

Q. What is your trade name in this service station?

A. Bill's Texaco Service.

Q. Getting back to Goodrich, you purchased what from Goodrich, tires? A. Tires, tubes, and batteries.

Q. Accessories? A. No.

(5008) Q. None at all? A. I would just as soon say None. There might have been at certain times promotional items but that is about it.

Q. What about their plugs, filters, fan belts, hose, you

didn't buy those from Goodrich? A. No.

Q. Did you discontinue about April, 1957! A. That would be correct.

Q. Did you complain to the Texas Company at all about

the poor service from Goodrich? A. No.

Q. Were they aware of the difficulties you were having with Goodrich? A. I made no special point of making them aware, if they became aware.

Q. You made no special point to tell them? A. No.

#### John A. McGuire, for Respondents-Cross

Q. Did one of the salesmen ask you from time to time how you were getting along with your TBA supplier? A. Yes, I think they have. Yes, they have.

Q. Then you must have told them about the trouble with Goodrich? A. Well, as a person usually states they generalize and they say: Well, everything is all right; they don't usually (5009) get down to cases and say: He is had, and he is good.

Q. When did you then shift from Goodrich to other products, after your supplies gave out, starting in April

of 1957, is that correct? A. Yes.

Q. When did you start ordering from Firestone? A. At the conclusion of our dealings with Goodrich.

Q. That was around April or May of 1957? A. Yes, sir.

Q. And where is your source of supply for Firestone, merchandise? A. Northwest Tire and Supply, Northwest Highway, Arlington Heights, Illinois.

Q. Now, at the present time do you have any Goodrich

tires in your shop? A. I do have.

Q. Can you tell us about how many? A. Two.

Q. And do you have any other Goodrich merchandise around the station? A. Yes; I believe I have two batteries—I mean this is in the station proper.

Q. Yes. A. Two batteries in the back room that are

for our own use on the jeep.

(5010) Q. When you stated that of all your TBA about 55 percent is not Firestone— A. That is right.

Q.—how do these Goodrich items figure in that? Does that change the percentage in any way? A. No, because those items— The four items you could pick out two of them are not really for sale and two of them are things I almost have to give away anyway, because it is just old stuff.

Q. On those Auto-Lite batteries, will you tell us where you bought those? A. Berry Tire Company and Grand.

Q. Is Grand a second source of supply? A. Grand, yes, in Waukegan. I don't know whether I mentioned that before.

Q. Have you been buying batteries continuously from

Berry! A. No, sir.

Q. When did you discontinue? A. There actually has not been a point of discontinuing their delivery. When we need something in a hurry we go to Grand.

Q. Didn't you just recently place a sizable order with Berry? A. Yes, I did. I think it came to about \$75, I

think it (5011) was.

Q. Can you tell us when that was? A. Approximately

ten days to two weeks ago.

- Q. Up until that time when had been the last time you placed an order with them? A. Perhaps two months, because I remember we got six tires from them.
  - Q. Tires? A. Yes; I believe it was six.
  - Q. Were they new tires? A. New tires.

(5014) PATRICK DELLE GRAZIE was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

## Direct examination by Mr. Lorenzen:

- Q. Will you give your name and your home address to the reporter, please? A. Patrick Delle Grazie, 8941 LaCrosse, Skokie, Illinois.
  - Q. What is your business? A. I operate a gas station.
  - Q. What brand of gasoline do you sell? A. Texaco.
- Q. Is your station leased from the Texas Company?
  A. Yes.
- Q. What is its location? A. 3003 Central Street, Evanston, Illinois.

- Q. That is in the general Chicago metropolitan area? A. Yes.
- Q. Are you near the Evanston Auto Supply Company? (5015) A. Yes.
- Q. Are you near the Berry Tire Company? A. No. They are in Chicago.

Q. They are in Chicago? A. Yes.

- Q. You buy or used to buy a little from them, too, though? A. Yes.
- Q. About what is the gallonage of your station? A. About 12,000.
- Q. How long have you been in that station? A. It will be five years in February.
- Q. Before that time were you in the gasoline station business? A. Yes, also Texaco, working.
- Q. For how many years? A. Seven before that; twelve years altogether.

Q. 12 years altogether? A. Yes.

- Q. Do you have a hobby which is not selling gasoline?
  A. Yes.
  - Q. What is that? A. Racing.
  - Q. Midget automobiles? (5016) A. Yes, midgets.
  - Q. They have tires on those, do they? A. Yes, they do.
  - Q. What kind do you use? A. Firestone.
  - Q. You have for some time? A. Yes, 12 years.
  - Q. Do you handle TBA? A. Yes.
  - Q. You handle TBA at this station? A. Yes, I do.
- Q. Will you tell us why you handle it? A. To get the people in there, it makes money.
- Q. You make money on the sale of TBA? A. That is right.
- Q. As well as getting people in there? A. That is right.
- Q. You think it helps you with selling gasoline? A. That is right. You have to have one to go with the other. I can't just have gas or TBA, you have to have them both.

Q. What is your understanding as to the Texas Company's TBA policy and TBA program? A. Well, the understanding is that they would like you to handle the nationally advertised things, something (5017) that is accepted by the public, and either they suggest Goodrich or Firestone, but I took Firestone before I ever even talked to the salesman. I mean, if they suggested Goodyear and Royal, I would still pick Firestone, and it was my understanding that I could pick any one that I wanted.

Q. And you have had that understanding that you could pick any kind of TBA you wanted? A. That is right.

Q. And that you could buy from any source you wanted to? A. That is right.

Q. And have you in fact acted that way during the time you have been a dealer? A. I have.

Q. Has anyone from the Texas Company ever told you that if you didn't stick to the Firestone and Goodrich lines that your lease would be cancelled? A. No.

Q. Or that the Texas Company would treat you badly

in any other way? A. No.

Q. Nothing like that has happened? A. Nothing.

. Q. You say that you picked the Firestone before any (5018) Texas salesman ever talked to you? A. That is right,

Q. Will you tell us the basis for picking the Firestone brand? A. I think that it is the best tire made. I have tried Dunlop, Royal, and Firestone is the only one I have had no trouble with.

Q. You use those on your car? A. That is right.

Q. In addition to tires which you buy from the Firestone store—you do, do you not? A. Yes.

Q. Do you buy any other TBA from that Firestone store? A. Not too much. Once in a while if they have a sale I will buy something.

Q. But as a general proposition you get your accessories elsewhere? A. That is right.

Q. And your batteries elsewhere? A. That is right.

Q. Now how about giving us the names of some of your other suppliers? A. I buy mainly batteries from Automotive Tire & Supply in Skokie.

(5019) Q. What kind of batteries do you buy from

them? A. Delco batteries.

Q. Have you always bought Delco from them? A. Yes.

No, I und to buy Auto-Lite from them and he had a little trouble, he got into some trouble with Berry Tire Company and he no longer could sell Auto-Lite batteries, so he changed over to Delco and I changed with him.

Q. You mean the Berry Tire Company had his fran-

chise taken away? A. That is right.

Q. So then they changed to Delco and you changed to

Delco, too? A. I changed to Delco also.

Q. What else do you buy from Automotive Tire & Supply Company? A. Mufflers, fan belts, hoses, Prestone, polishes, chemicals, just about everything.

Q. What kind of fan belts do you buy from them? A.

Gates.

Q. How do you stock those? A. I have a complete assortment hanging up on racks.

Q. Do the racks have the names on? A. Oh, yes, Gates

comes in and puts them up for you.

(5020) Q. Just the same way as Firestone comes and puts up signs? A. That is right.

Q. Rather than put in another picture, I will just show

you one of these.

I show you Respondent's Exhibit 42-D and ask you if that is a Gates' type of rack? A. Yes, that is the same type rack I have, and also on the hoses, those are Gates' hoses.

Q. That is also Gates! A. Yes.

Q. And it has the name acros the top in each case? A. That is right.

- Q. And your belts have the name on? A. Yes.
- Q. On the sleeve? A. Yes.
- Q. And your radiator hose has some identification as well? A. That is right.
- Q. What sort of filters do you handle? A. Right now I am handling A-C. I was handling Walker.
- Q. You buy the A-C from whom? A. Schubert Auto Parts in Wilmette.
- (5021) Q. That is another one we haven't heard about before. Where are they located? A. They are located in Wilmette, Ridge Road.
- Q. They are neither a Firestone nor a Goodrich dealer? A. No. I buy batteries from them also, Auto-Lite, but I don't stock any Auto-Lite batteries.
  - Q. And battery cables! A. Yes.
- Q. Now from whom do you buy your spark plugs? A. Schubert and Automotive Tire. I used to buy them from Berry when I was handling the Auto-Lite.
- Q. Do you have any other suppliers? A. Village Chevrolet, Whissle Motors, Hasco Hydraulic Research. I buy from just about everybody.
- Q. How about Evanston Auto? A. Yes, Evanston Auto.
- Q. Do you buy anything from Johnson Tire Company?
  A. Yes, Goodyear tires.
  - Q. Goodyear tires? A. Yes.
- Q. You say that you handle these Firestone tires. Will you tell me how many of those you stock? A. I don't stock any.
- Q. So that all of your sales are made on a pick up (5022) or spot delivery basis? A. That is right. I don't have room to stock any.
- Q. Let's come back to these batteries a minute. Your Delco batteries, are they displayed? A. Yes.
  - Q. Openly with the name on them? A. Yes.

- Q. How about a sign, do you have a Delco sign advertising Delco? A. Not now at the moment. I did have but it was hanging on the fence and I ran into the fence and knocked it over.
- Q. Have you made a request for a new sign? A. Yes, I have, but it hasn't arrived yet.
- Q. When it does arrive are you going to put it up again? A. Oh, yes.
- Q. Now has anyone from the Texas Company ever told you to take away the display of these non-sponsored items, including the Delco and Auto-Lite batteries? A. No.
  - Q. Nothing like that has ever happened? A. Never.
- Q. Have they ever told you they would cancel your lease or treat you badly if you didn't stop displaying (5023) those items? A. No.
- Q. You say you still buy a little from this Berry Tire Company? A. Yes.
  - Q. At one time did you buy more? A. Yes.
- Q. What happened to change your buying habit there? A. Well, the main thing was that battery incident with Automotive when the salesman came in and we were getting a better price from this Automotive Tire & Supply, and this man from Berry, he didn't like the idea, so I guess he turned him in. He was giving us an extra 5 per cent at the end of the month. And I didn't like the salesman anyway, he was—
- Q. Who is that, Mr. Dwyer! A. Dwyer. He was always crying about something.
- Q. If you exclude from your mind now these clutches and carburetor parts and ignition parts and things like that when we talk about accessories, can you tell me of the total amount of tires, batteries and accessories which you sell, about what percentage you think is in tires? A. About 30 per cent in tires.

- Q. About what per cent do you think is in batteries? (5024) A. About 10 per cent in batteries; about 60 per cent in accessories.
- Q. In that 60 per cent have you included such things as mufflers and tail pipes and shock absorbers? A. No.
- Q. If you did— A. If I did it would go up another 10 per cent at least.
- Q. What do you find with respect to the make of tires, the brand of tires that your customers generally ask for? A. Well, most of the time it is Firestone. I mean, every body knows that Firestone is a good tire. The only time I don't seem to sell a Firestone is if they have a new car and it comes through with a different make tire and they don't want to break up the set. Then I will sell them anything they want.
- Q. You will get them anything they want? A. Oh, yes, any tire.
- Q. Now these Auto-Lite batteries or Delco batteries which you sell, are they dry charged? A. Yes.
  - Q. Do you stock any others? A. No.
- Q. At one time before the dry charged batteries came (5025) in, did you stock the wet charge or did the station at which you got them stock wet charge batteries? A. Yes.
- Q. From your experience do you find any advantage in dry charge? A. Oh, yes. You don't have as much trouble with them. When you buy a battery and it is wet charged, it sits around for three or four months and there is a third of the warranty gone, just about, on a one year battery. You have to keep a charger on them all the time on a wet charge. It is a lot easier with the dry charge.
- Q. Of all of your TBA that you handle, about how much do you think is bought from Firestone! A. Just about all the tires are from Firestone, that is about all I buy except, like I say, when they come out with a deal on polishes, tubes, then I buy.

Q. So the percentage that you gave us of 30 per cent tires and 10 per cent batteries and about 60 or 70 per cent, depending on whether you include the mufflers in or not, we can use that to determine how much you buy from Firestone? A. That is right.

Q. Do you buy anything from Goodrich! A. Occasionally I will buy a tire from the Goodrich (5026) Com-

pany if a customer wants one.

Q. Is it any substantial per cent of your total TBA? A. Very little. I mean, I have had a lot of bad luck with Goodrich and most of the time when they would come in with a Goodrich tire, it is because it got bad, it failed, not because it wore out. The way I look at it, you never buy a Royal or a Goodrich, you just rent it and keep making the adjustments on them.

Q. You are going to endear yourself to some of these Goodrich dealers. A. I have never seen one wear out.

Mr. Dias: They don't last that long? The Witness: No.

#### By Mr. Lorenzen:

- Q. Of course the employees of the Texas Company that come into your store know that you handle all of these non-sponsored products? A. Oh, yes. I don't even use Texaco in my race car.
  - Q. You say you don't? A. No.

Q. Now do you find that the Texas Company is of any help to you in marketing your TBA? A. Oh, yes.

Q. What do they do for you? (5027) A. They come around and give us hints on how to display it. We don't have time to do it. They have these dealer meetings, and any price changes, if we don't catch it, they do.

Q. You mean price changes in the TBA items? A. That is right. We have everything listed and if they know

something went up and it is still labeled at the old price, they will tell us about it.

Q. Is this assistance of help to you in selling your non-sponsored TBA as well as selling the Firestone tires? A.

Oh, yes.

Q. Now about the business that you do with Evanston Auto Company, how about that, is that as much now as it ever was? A. Yes. They have a salesman that calls on me and he checks on plugs and points and the hoses and the belts, and he has orders that whatever is missing to replace it.

Q. Have you switched any of your business from Evanston to Schubert! A. Yes. Schubert is a lot closer. Evanston Auto delivers twice a day and Schubert is just a few blocks from me and I run back and forth and pick up most

of the stuff from him.

(5028) Q. Schubert is not a Firestone or Goodrich

supplier? A. No.

Q. Have you, in fact, felt free to buy your TBA any place where you thought it was good business to do so?

A. Yes.

Q. And you have done so? A. Yes.

Q. Now you spoke a few minutes ago about attending these dealer meetings, Texaco dealer meetings. A. Yes.

Q. For how long have you been attending those meet-

ings! A. Almost 12 years.

Q. During that time and at any of these meetings, has any representative of the Texas Company ever made any threat to any dealer or to all of the dealers there as to any dire consequences which would happen if they didn't handle the Firestone or Goodrich TBA! A. No.

Q. Do you get a chance to talk to a good many dealers

at those meetings? A. Oh, yes, all of them.

Q. At any time have any of these dealers told you that they had received any threat of that kind from (5029)

a Texas representative with reference to their TBA buying habits? A. No.

Q. Yoù did try Dunlop tires on your racing car at one time, did you? A. No, on my own car.

Q. On your own car? A. Yes.

Q. What happened? A. I went to Florida and back and they were shot.

Q. Did you get those Dunlop tires from the Berry Tire Company? A. Yes, I did.

Mr. Lorenzen: That is all.

### Cross examination by Mr. Dias:

- Q. On these dealer meetings that you have attended, Mr. Delle Grazie, have you ever heard Texas personnel recommended Goodrich or Firestone to the dealers? A. Yes.
- Q. Talking about the gas in your race car, is that gas in the same category as the Goodrich tire, the gas for your racing car? A. Oh, we don't use gas, we use alcohol.

Q. That is what I thought.

(5030) So that it was no great sacrifice when you didn't use Texaco gas in your race car, is that right? A. No, I use it in the stock car.

Q. Also on this dry and wet batteries, doesn't Firestone have a dry charge battery? A. Yes, they do.

Q. Yet you prefer Delco, do you! A. Yes.

Q. Is there any special reason for that? A. Yes. It is original equipment in your General Motors cars, and that is why I handle the Auto-Lite also, I try to sell them original equipment. It is easier to sell a man that comes in, if he has a Delco in the car, I tell him I will sell him the same thing as the factory put in, and the same with Auto-Lite. Those are the two batteries they put in all their cars.

Q. Do you find in your opinion Delco is advertised more extensively than Firestone batteries? A. No, I don't think so; no. They are both advertised a lot.

Q. Well, generally you see Firestone tires advertised, you don't see the Firestone battery advertised. A. Well, in your newspaper ads you do, you see the (5031) bat-

teries advertised.

Q. How about national advertising? A. No, not as much as tires. The way I look at it, tires is their main business.

Q. Yes. Then on national advertising, would you say that Delco or Firestone are more widely advertised? A. Delco.

Q. Incidentally, on that dry and wet charge battery, isn't there some work involved in using that dry charge, that is, in your installation of it? A. Not too much. In the wintertime usually you should put about a ten minute charge on them.

Q. Doesn't it run closer to 20 minutes? A. No, I have

never left them on 20 minutes.

Q. Don't you have to add acid? A. Yes, you but the acid in.

Q. What all do you do to a dry charge to get it ready to put into a customer's car? A. Put the acid in, put a charge on it for about 10 minutes.

Q. And after you have done that, is that battery fully charged? A. It all depends on how long the acid has been

sitting around.

Q. Isn't it true that after you put a dry charge (5032) battery into a car, after you have prepared it and put it in the car, it still requires the car generator to pick it up to full capacity, isn't that so? A. Yes. But you plan on that. Usually you ask the customer if he is going to do any driving or if he is going right home with the car. I have put them in without even charging them.

Q. On the other hand, a wet battery, assuming that your supplier periodically serviced you on those, wouldn't a wet battery be just as good as a dry battery? Assuming now— A. If it was fresh, yes.

Q. Yes, assuming that the battery supplier kept a fresh supply on hand at all time? A. Yes, but you don't know if he does that or not. That is a chance you take. I mean, I have put batteries in and had them come back the next day and they were no good.

Q. You never had that experience with a dry charge?

A. Not yet.

<sup>o</sup>Q. On Firestone plugs, do you ever buy Firestone plugs? A. No.

Q. Is there any reason for that? A. I like Champion, that is what I handle. I like (5033) the Champion plugs.

Q. Do you think the Champion is better than the Firestone? A. Well, I can't really say because I have never tried the Firestone.

Q. On that Berry incident, you have had experience with franchise dealers in the area from time to time, have you not? A. Yes.

Q. You know, do you not, that when a distributor has a franchise that he is entitled to an allotted area, is that

right? A. Yes.

Q. Is there anything unusual about Berry being upset about the fact that another distributor had moved in on his territory? A. I don't think he moved in on his territory. I think the factory takes care of that. I mean, they will only put so many dealers in an area.

Q. So that actually the fault, if any, lie with the manu-

facturer, isn't that correct? A. Yes.

Q. Did Berry have the franchise before or for a longer period than this Automotive Supply! A. Yes.

(5034) Q. They had it before them, did they not? A. Yes, that is right.

- Q. Can you give us some idea of the dollar volume of your battery and accessory business? A. With Automotive?
- Q. No, I mean overall battery and accessory business, sir. A. It varies. In the winter time it is pretty high.
- Q. In the winter it is? A. Oh, yes, that is when we sell most of our batteries.
- Q. Can you give us some idea of what your volume is in the spring and summer and then fall and winter? A. In the winter probably about three or four hundred dollars a month on batteries.
- Q. For how many months would that be now? A. About four months.
- Q. And then the rest of the year—or do you know? A. The rest of the year is pretty slow on batteries.
- Q. How much would that be about? I mean batteries and accessories? A. Batteries and accessories, well, that three or four hundred dollars would go for the whole year then on the batteries and accessories. Accessories, now that is taking in plugs?
  - (5035) Q. Yes, filters, fan belts. A. Yes.
- Q. Can you give us some idea of the dollar volume of your tire business year round? A. It probably averages out about \$250 a month. I am not a big tire dealer.
- Q. As a matter of fact, your station is a rather small one, isn't it? A. I have got two bays. My office is small. My work area is as big as anyone else's.
- Q. Do you do any repair work there? A. Yes, I do everything.
- Q. Is the trade name of your station Pat's? A. Yes, Pat's Texaco.

(5036) JOHN E. ROESSNER was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

#### Direct examination by Mr. Lorenzen:

- Q. Will you give your name and home address to the reporter? A. John E. Roessner, 6202 East 10th, Indianapolis, Indiana.
- Q. Mr. Roessner, you have had some connection with courts, heretofore, have you? A. Somewhat, yes.
- Q. What connection have you had? A. One time I was Clerk of Juvenile Court for four years in Marion County.
- Q. That is located in Indianapolis? A. Indianapolis, yes, sir.
- Q. But now you are not connected with the judiciary?

  A. No. That has been some time ago.
- Q. What is your occupation now? A. I am now a lessee Texaco dealer.
- Q. Will you tell me at what locations your stations are located? A. 1601 North Meridian, Indianapolis, Indiana, and (5037) 2330 West Washington, Indianapolis, Indiana.
- Q. What is the monthly average gasoline volume of your North Meridian Station? A. 58 to 60,000 gallons average.
- Q. That is a pretty good sized operation, isn't it? A. Well, it is fair.
- Q. How about your other station? A. I have only had that since February. We are running from 30 to 35,000.
  - Q. At these stations do you-strike that.

For how long have you been a Texaco lessee? A. 13 to 14 years.

Q. Before that time were you in the petroleum business too? A. Yes, I had been with Sinclair Refining Company for 7 years in the petroleum business running two service stations.

- Q. At one time were you a supply point for some Texas dealers supplying them with all kinds of tires? A. That is correct.
  - Q. That is, Goodyear, U. S., Firestone? A. Goodrich.
- Q. And Goodrich! A. That is correct, and some Armstrong.

Q. You sold them all? (5038) A. I have sold about all

of them, Ferrin, and a few others.

Q. Have you had an opportunity to become acquainted with Texaco stations in your neighborhood? A. I have.

Q. You handle TBA at your stations? A. I do.

Q. Will you tell us why you handle it? A. The reason why I handle it, because it helps my gasoline gallonage; also it makes me competitive; and gives me good profit.

Q. During the time you have been connected with the sale of Texaco gasoline and the time you have been a lessee, do you have an understanding of what the Texas Company's TBA program and its policy has been? A. I have.

Q. What has been your understanding? A. When I checked into the Texaco station at 16th and Meridian, they suggested that I handle Firestone-Goodrich, and I told them I had contacts with Goodyear and Ferris. They said, "Well, Mr. Roessner, whatever you want to handle is all right with us."

Q. Has it been your understanding ever since that that

is the policy of the company? A. That has been.

(5039). Q. Has any employee of the Texas Company ever told you that you have to handle the Firestone or Goodrich line or your lease is going to be cancelled? A. No, sir.

Q. Any threats to treat you badly in any way been made

to you with respect to TBA? A. No, sir.

Q. Now would you tell us who some of your TBA suppliers are? A. Well, my suppliers, I buy from Goodyear; I buy from Firestone; I buy from Capital City Tire Com-

pany occasionally; I buy from Gibson Company; Central Rubber & Supply; Allen Auto Supply; Automotive Supply Company; once in a while Maddox Supply, Maddox Auto, I think it is.

· I don't know whether I have left any out or not.

Q. Pennsylvania Tire Company? A. That is correct, I buy from them; I buy tubes from them.

Q. Did you mention the U. S. Rubber Company? A. I used to buy from them. We don't handle U. S. any more.

Q. How about Century, do you buy any Century tires?

A. That is correct, I buy Gates hose from them, Gates belts from them, hose and parts.

(5040) Q. What sort of batteries do you stock now?

A. We are stocking at present Red Diamond and Willard.

- Q. You buy those from whom, the Red Diamond Battery Company? A. Yes, Peoria, Illinois.
- Q. How about the Willard? A. Central Rubber & Supply.
- Q. What sort of tires do you stock! A. I stock Firestone and Goodyear.
- Q. Now— A. I have a few others, but mostly Firestone and Goodyear, that is about 98 per cent of it.
- Q. Do you have signs from both of those companies?
  A. I do have.
- Q. When you opened up this station on Washington, what kind of tires did you stock there at the time you opened? A. Well, the first thing we put in there was Goodyears. We bought 14 inch on a buy on seconds, so we stocked it heavy in that neighborhood with Goodyear tires for a sales proposition where we could give 50 per cent off to draw in new customers on our new location.
- Q. What kind of batteries did you stock? A. I stocked Red Diamond and Willard,
- Q. From the beginning when you opened at that station? A. That is correct.

(5041) Q. Do you display all of your TBA? A. I do.

Q. Openly! A. I do.

Q. Did anybody from the Texas Company ever suggest to you that you mustn't display any of these items except Firestone! A. No, sir.

Q. Has anybody said they would cancel your lease or otherwise treat you badly if you didn't? A. No. sir.

- Q. You are under this same lease form we have been talking about which renews itself from year to year unless it is cancelled on 10 days notice? A. That is correct.
  - Q. That is your type of lease? A. That is correct.
- Q. Now you buy oil from the Texas Company now in carload lots? A. I do.
- Q. Was there a time when you bought it in such a way that you got a quantity discount check? A. That is correct.
- Q. By the way, from your experience with the Texas dealers in that Indianapolis area, do most dealers buy (5042) the oil in smaller quantities than carload lots? A. That is correct.
- Q. So that they get the quantity discount? A. That is correct.
- Q. But you haven't bought that way in the last three or four years? A. About three or four years.
- Q. We had a little trouble, Mr. Roessner, in getting in Exhibit 39 because it wasn't addressed to the witness on the stand, and I asked you, did I not, if you could find a letter sending you your quantity oil discount check in '53 or '54? A. Yes, that is correct.
  - Q. And did you look for it? A. Yes, I did.
  - Q. And you found one, didn't you? A. I did.
- Q. I ask you if this is the quantity discount check, the letter which accompanied your quantity discount check? A. Yes, sir, I believe that is the one all right.

(5043) Mr. Royall: Also you want to show that it continues; this is for one year and the other was for another year.

Mr. Lorenzen: Mr. Smiley I think testified this was a regular form letter which was sent out each year but I just wanted to be sure we had a witness on the stand who actually got one.

I offer that in evidence.

Hearing Examiner Kolb: The document will be received into evidence as Respondent's Exhibit 54.

(The document referred to was thereupon marked for identification Respondent's Exhibit 54 and was received in evidence.)

#### By Mr. Lorenzen:

Q. What do you find, Mr. Roessner, with respect to the customer's demand for tires by brand name? A. Well, we find that Firestone is our best seller, Goodyear second, and we find that Goodyear and Firestone lead the pack. I think from sales records it is easier to sell because I can show where Firestone is second and Goodyear is No. 1 on sales and we have (5044) some good arguments about which tire is best.

Q. Is that the basis for your choice of those two tires as being the ones you handle? A. That is only one of the bases. Another reason why, I have had a lot of experience in off brand merchandise on tires and they are pretty hard to sell, only through price.

Another thing that makes them hard to sell is the fact that they don't hold up, and when you give away your price then you are on an equal basis with Firestone and Goodyear. So you are better off taking an advertised brand of tire which you can break down your sales resistance with, and you don't have the kick back on the adjustments and

the public knows what they are buying. Although I will sell them any type of tire they want if I possibly can get it in the City of Indianapolis, if that is what they desire.

Q. The choice of the tires you handle, including the

Firestone, is entirely your own? A. That is correct.

Q. For business reasons? A. That is correct.

Q. And it is not a choice dictated by the Texas Com-

pany? A. That is correct.

(5045) Q. Do you find that the Texas Company is of any assistance to you'in merchandising TBA at your stations? A. Well, I have attended a lot of dealer conferences and sales meetings and we have had a lot of help on merchandising, sales programs, yes, sir.

Q. It helps you with your Firestone merchandise as

well as with all of the others? A. That is correct.

Q. For how many years have you been attending these dealer meetings? A. Oh, for 14 years, 13 or 14 years, as long as I have been there.

Q. Before that time did you have occasion to talk to Texas dealers when you were supplying them with tires?

A. Oh, yes.

Q. During all that time have you ever had any Texas dealer complain to you or heard a complaint that the Texas Company was threatening him with cancellation of his lease or other treatment if he didn't buy the recommended line of TBA? A. To my knowledge I never heard anybody complain.

Q. Did you ever hear any threat of that kind made at any of the dealer meetings in your area? (5046) A. No,

sir, I never did.

Mr. Lorenzen: I will ask to have this page marked from the Indianapolis Star dated May 23, 1958. I will ask it be given the next number for identification.

(The document referred to was marked Respondent's Exhibit 55 for identification.)

#### By Mr. Lorenzen:

Q. I show you Exhibit 55 for identification and ask you if you will state whether you recognize that as a page from the Indianapolis Star? A. Yes, that is.

Q. That is your home town newspaper, as a matter of

fact? A. That is correct, that is the morning paper.

Q. I call your attention to the left-hand corner of that exhibit and ask you if that is an advertisement of the Cooper Tire & Rubber Company? A. That is correct.

Q. Is that one of the tires that you would consider a lit-

tle difficult to sell! A. That is correct.

Q. It seems as though there is a little difference of opinion among your Texaco stations, doesn't it? A. It might be so.

(5047) Q. Do you recognize on that advertisement a listing of Texaco stations? A. Yes, that is right, I recognize that.

Mr. Dias: No, I wondered whether or not you had an opportunity to participate in this particular ad.

The Witness: I probably did if I wanted to (5048) call Cooper and was interested in a deal. They haven't called on me, not for some time, because I am not interested in Cooper tires.

## (5049) By Mr. Lorenzen:

Q. Are all Texaco dealers checked on this advertisement, so far as you know? A. I think this Model Tire Company is handling Texaco gasoline. I am not positive, I kind of think it is. I know they handle some Firestone tires, but I think they got the Texaco gas.

Yes, sir, I believe they all are outside of there might be something out of town on that one, that Model Tire Com-

pany. I think they are all Texaco gasoline dealers.

Q. Now the check that we are talking about for the Texaco stations is the blue ink X following the name, is that correct? A. That is correct.

(5050) Mr. Dias: Do these blue checks indicate,—are they all the Texaco dealers in Indianapolis?

The Witness: You mean are they all the Texaco service stations that Texaco have in Indianapolis?

Mr. Dias: Yes.

The Witness: They are only 6 of them. I don't know how many they have there, but I imagine it is between 40 and 60 stations.

## By Mr. Lorenzen:

Q. Are you acquainted with the particular dealers listed on that advertisement yourself? A. I am, all but the one at Knightstown, I do not know him. That is out of town.

Q. Have you sold those stations at a time when you

were a supply point? A. I have.

Q. Do you know whether those stations are operated on a lease from the Texas Company? A. They are lessee dealers like me.

Q. They are! A. Yes, sir.

- (5051) Q. Mr. Roessner, have you looked at these pages which have been marked Exhibits 56-A and -B? A. Yes.
- Q. To ascertain if they are copies out of the yellow pages of the Indianapolis Telephone Book? A. Well, I would say they are copies out of the Indianapolis Telephone Book.
- Q. Will you look at 56-A, I think that has to do with batteries, does it not? A. 56-A?
- Q. 56-A, yes, look under Delco Batteries and see whether you see anything listed that you recognize as a Texaco Station? A. Yes, sir, I do.
- Q. Which one is it? A. Marcell's Texaco Service Station.
- Q. Do you have another type of battery known as Anico-Lite? A. That is correct, that is an Indianapolis manufacturer.
- Q. Look under that and see if you can see any Texaco station listed under that? (5052) A. Yes, sir, Ashby Texaco Service Station.
- Q. Is Universal Battery another kind of battery? A. Yes, it is made in Chicago, I believe.
- Q. Will you look under the Universal advertisement and see if you can find any Texaco dealers under that? A. Yes, sir, Bailey & Carson, E & M, E & M Texaco.
- Q. Will you look on the next page under Armstrong Tires and see if you can find any Texaco station listed under that? A. Yes, sir, Seagraves Texaco Service Station.
- Q. Are you sufficiently acquainted with the stations whose names you have just listed to tell me whether they also are lessee dealers like you are? A. Well, most of them, not all of them. There are a couple of new ones in there that I couldn't be positive about.

#### JA 1617

## John E. Roessner, for Respondents-Direct

Q. Tell us the ones you know. A. Ashby, I know that one, that is like me.

Q. Lessee, he is a lessee, did you say? A. Lessee, yes. Bailey & Carson, that is a lessee; E & M, that is a lessee. The only one I don't know definitely is that Seagraves.

Q. How about Marcella? A. Marcella, that is a lessee.

(5053) Mr. Dias: Mr. Roessner, listed under the Firestone Batteries on 56-A, can you tell us which ones of those Texaco stations are lessees?

The Witness: That England Station, that is a lessee station. I am not positive about that Mason Brothers; that must be a new dealer, but I kind of think that is a lessee station.

Bob's Texaco Service Station, that is a lessee station. Harger Service Station, that is a lessee station. I do not know about Harold's Texaco Service Station on Kentucky Avenue. I don't know him.

I am almost positive Garfield Texaco Service Station, that is a lessee.

That Hassell's is what they call a second party. I don't know how that thing is run. I don't know whether he leases from the owner or he leases from Texaco; that is questionable.

(5054) Mr. Dias: But he has a lease either from Texas Company or somebody else?

The Witness: Yes, sir.

Mr. Dias: That completes the list, does it? The Witness: Yes, sir. On our Firestone.

Mr. Dias: Yes. The Exhibit 56-B seems to terminate right at the point where Firestone suppliers start. I have no objection to the rest of it.

## John E. Roessner, for Respondents-Cross

#### By Mr. Lorenzen:

Q. Just let me ask you one question. Do you know from dealing with the advertisers in the Yellow Pages whether the dealers who are listed on those Yellow Pages have to pay for that listing? A. Yes, I believe they pay for that listing.

Q. That's all. A. I'm not positive, but I never got any

listings free.

Q. You've had to pay for anything in the Yellow Pages!
A. Correct. To the Telephone Company.

#### (5055) Cross examination by Mr. Dias:

Q. Mr. Roessner, as I understand it, between your two stations you pump roughly 90,000 to 100,000 gallons a month, is that correct? A. That is correct.

Q. How long have you been in that station now? A.

Oh, 13, 14 years.

Q. And when was it that you acted as a supply point of Texas Company stations? A. Well, it's been—let's see—is the Firestone man here? He could tell you. When Mr. Dykes left—I think that's about four or five years ago—now, the time slips on me. I've been in it a long time.

Q. In other words, up to about '52 or '53—'53 or '54, you were a distributor of these various items? A. Yes, for about two, three years I was a distributor for them.

(5056) Q. Up to that period of 1955 then you were contacting all these Texaco stations, were you? A. Yes. In the area. I contacted most of them. I at one time had a salesman or two working for me.

Q. But you personally generally went around, is that

so? A. That's correct.

## John E. Roessner, for Respondents Cross

Q. What is the heavy tire in that area! In other words, in each area there is one tire that seems to predominate, of these Firestone and Goodrich. A. Well, Firestone is the heavy tire.

Q. In Indianapolis, is that so? A. That's correct.

Goodrich is very hard to sell.

Q. And from your observation, having gone around to all these stations, did Texaco stations generally handle Firestone or Goodrich? A. Well, they vary quite a little bit. Of course, where they vary it's strictly with price. The boys would buy tires for a price to meet competition. It's a competitive area. It's pretty highly competitive in Indianapolis in the tire business.

Q. Is there any special reason for that? A. Yes, sir,

there is a special reason for that.

Q. What is that? A. Tire companies pretty well advertise their price. They have two or three stores there. Even Cooper has a store. (5057) Word gets around that you can buy them at the wholesale prices.

Q. Would you say that's unusual? A. In the tire busi-

ness?

Q. Yes. A. Well, I'm not familiar with every market.

Q. No, but I mean, was that an unusual situation in the Indianapolis market? A. It always has been, ever since I've been in the business.

Q. That situation has prevailed, has it? A. That so right. One time Goodyear sold tires right in my filling

station cheaper than I could buy them.

Q. Well, do you recall the type of advertising that Texaco stations generally had about their stations—Texaco station operators generally had Firestone or Goodrich advertising about their stations? A. You mean in the way of displays or signs, sign material, or what not?

Q. Yes. A. Yes. Generally they do have. I think it's more accessible to them than the other advertising, be-

cause—you take, for instance, Pennsylvania, and the rest of them, your other suppliers, they don't contact you as much. They don't have the sign. They don't show the interest. And so therefore you take the course with the least resistance. (5058) You put whatever is—

Q. You certainly wouldn't put up a Firestone sign if you had Pennsylvania to sell? A. Naturally you wouldn't go to extremes. You wouldn't put some advertising up

that you didn't even handle. That's true.

Q. Do you know enough about the market as of the present time to tell us how many Texaco stations are handling Firestone! A. No, sir, because I lost contact within the last couple of years. But I imagine the majority of them are handling Firestone. Maybe in that market probably 60% to 40% Goodrich. There is some Goodrich in there. And then the boys handle whatever—a lot of them do; I can speak mostly for myself—I handle whatever the customer wants to buy.

STANLEY GRELECKI was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

#### (5059) Direct examination by Mr. Barton:

Q. Will you please give your name and address to the reporter? A. Stanley Grelecki, 7438 Jackson Avenue, Hammond, Indiana. I'm a partner in the firm of Niemiec & Grelecki, 652 Burnham Avenue, Calumet City, Illinois.

Q. Mr. Grelecki, what business are you in? A. We are

in the tire, battery and accessory business.

Q. And what is the name of your firm? A. Niemiec & Grelecki.

Q. And where is your business located? A. We are at 652 Burnham Avenue, Calumet City, Illinois.

- Q. Is Calumet City within the metropolitan area of Chicago? A. Yes, sir, it is.
- Q. And what brand of tires, batteries and accessories do you handle? A. We handle B. F. Goodrich tires and batteries, and accessories. We do have what they call their accessory line, which is composed of Simonize, Johnson, DuPont, several other; Champion spark plugs, for instance.
- Q. You handle their complete accessory line? A. That's right, sir.
- Q. How long have you been in business in this business of Niemiec & Grelecki? (5060) A. I would like to start by saying that in 1948 I was working for the Red Star Yeast Company as a salesman. I went into a service station called Bolda & Niemiec; and I went in as a partner in the firm of Bolda & Niemiec, which we operated a Conoco service station. We also did some wholesale business.
- Q. Where was that? A. At 696 State Line Avenue, Calumet City, Illinois.
- Q. That's right across the street from Hammond, Indiana, isn't it? A. That's right, sir. Then in 1951 Mr. Bolda for health reasons moved to Florida. Mr. Niemiec and I bought him out. We continued operating the service station until July of 1953, when we went into the wholesale tire, battery and accessory business.

We sold our part interest—or, we sold half interest in the service station to one of our employees, and eventually we sold him the rest of our service station business. So we are not associated in the service station any more.

Q. All right. You sold your interest in the service station after you found out you were going to make a great go in the tire, battery and accessory wholesale business? A. Well, sir, the way that started, we had been handling Fisk tires and batteries and cables for a number of years.

Q. When was that? (5061) A. At the time I went in business with the other two gentlemen, they were handling Fisk tires and batteries. And I went in with them, and we continued selling that. And then possibly two years later we took on the Goodyear line and handled that along with the Fisk line.

Q. That was in 1950? A. That's right, sir. We handled—we sold everything through the service station and we had a warehouse separately.

Q. And you sold out that warehouse to other Conoco service stations, did you? A. Whoever would buy from us.

Q. I see. Go ahead. A. Then in the fall of '52 we took on the Goodrich line and gave up the Fisk. We took on the Goodyear line. We had the Goodyear line along with the Goodrich line—and this was about September of '52 when we took on Goodrich.

Then in 1953 we saw an opportunity to expand our wholesale business and we went into the location that we are at present.

About the end of 1954, due to the fact that a number of tires that we were getting in—the different sizes and types—we gave up Goodyear. Our sales were not large enough to warrant stocking an inventory of Goodyear—and along with the financial problems.

Q. You mean you had to stock so many tires in order to have a balanced inventory that you couldn't afford to stock (5062) two brands of tires? A. That's right, sir. And our Goodrich line naturally was going better than the Goodyear line, so we stayed with that.

Q. What is your trade area? A. We cover what is known as the Calumet Region, and that includes Hammond, Whiting, East Chicago, Indiana Harbor, Lansing, Hobart. We also have a couple of accounts at Lake Village and Schneider, Indiana, along with Calumet City.

Q. Now, there are of course a number of—what is the nature of your customers? A. The majority of our customers are service stations that we supply. We do have some car dealer business, that is, new car dealer business, along with garages, that might buy spark plugs or tires, or something that they would need.

Q. Well, how many service stations do you supply all told? A. We have approximately 100 that our salesmen

call on regularly. ·

Q. And by "regularly" you mean once a week! A. Yes. Our salesmen—we have two salesmen, and they call on each station at least once a week.

Q. And what's the situation with regard to you and your partner calling on stations during the time you've been in business? A. When we first started, naturally I was the only one that was selling, and I was covering the territory. We (5063) started out with Goodrich. Our territory man and myself made calls. He spent one day a week with us.

Q. You mean the Goodrich territory man? A. That's right, sir. I called on the service stations, and then as our business progressed we hired another man, and he and I called on service stations.

that time I have been doing inside work, helping buy merchandise, obtain it, also going along and following up promotions such as—a certain time of the year where we have —Oh, I might use as an example, like the direct advertising program which Goodrich puts out each year. We go out and explain that to the dealers.

We also, if they have any problems, such as they have —they might have on a tire adjustment or battery—or you might have a customer that's dissatisfied and they don't

feel they can handle it, we try to help him.

Q. Now, of these 100 service stations, do you have some Texas service stations? A. Yes, we do.

Q. That you supply? A. Yes.

Q. And how many of the 100 are Texas service stations? A. I would say between 30 and 35.

Q. And do you supply some Conoco stations? (5064)

A. Approximately 20.

Q. And do you supply some Ohio Oil Marathon stations? A. We have two or three in our area that we do sell some merchandise to.

Q. And what are the remainder of the service stations which you sell? A. They will vary; Standard, Sinclair, Shell, Sun Oil, non-brand gasoline, Phillips-there may be a few others that I don't recall right now.

Q. Now, how do you obtain the accounts which you obtained in the course of your-well, first of all-strike that.

What's been the nature of the size of the increase in your business in this ten-year period since you've been in business? A. We started out-when we took on Goodrich they happened to have the tire known as the Life Saver tire, and we went out and we actively promoted the sale. We explained to the dealers, by calling on them, the quality of the tire that we had. And at the time Goodrich was probably the only one that was making the tubeless tire, and I think Firestone had one also then. And we went out and we had a good product, and we sold it. We sold it on the basis that we were competitive in price, and we could give them the service that they needed. We had our supply in inventory and we tried to put across to the dealers that we could supply them with merchandise if (5065) they needed it in a hurry.

Q. What's been the nature of the increase in your sales? How many times have your sales increased over that period? A. Since we have been active in the line, I'd say in the ten years we have probably ten times what we started

out with in '48.

Q. Now, tell me, generally, how you obtained these Texas accounts which you obtained. A. The Texas accounts—we don't do any different, I don't think, than the other stations. We go out and give them the story on our product, the quality of the product, price, that we are competitive, that we can give them service. We follow up with advertising material, and by that I mean advertising signs that Goodrich does furnish us with. We help them put on—for instance now, this summer, since the first of the year, business has been a little bit tough. So we've made hand-bills for some of our dealers, where they're allowed to use them, and put on what we call special tire sales for them.

Q. You mean they—you make the handbills up and then they have them delivered in their area? A. That's right. We make up a handbill for their approval and then go ahead and get it completed, take it out to them, and they

distribute it in their area.

Q. What's been the results from that? (5066) A. Our results have shown some increase in tire business in each one of these cases.

Q. Now, what is involved in the service which you say you give the dealers? A. Our service—we don't have any certain date for service. By that I mean, we don't go into Gary one day, or Hammond another day. When our salesmen call on their route, the next morning their merchandise is delivered.

If a dealer should call and need tires, or whatever it may be, and he has sold a customer, we get out that merchandise to him. Whether it's a half hour, or an hour, or whatever the time that he needs to get the merchandise, we get it out to him.

Q. And what's the nature of the—the extent to which you have to make such so-called emergency deliveries? A. We don't consider those emergency deliveries. That we do every day. We have that right along. And while it's

a lot of extra effort on our part, but with the—and, again, with the number of tires and the kinds—and especially now that we've come into nylon cord, it's duplicating our inventory again. And it's almost impossible for dealers to

stock the tires that they need.

Q. Well, what is the nature of the problem there on stocking by service station dealers of tires? A. Well, sir, the average service station, if they had what (5067) we consider about 40 tires, that would be a good stock of tires. And when you get into—for instance, in one size, I might say, 670 x 15 tire, I think we can count about 25 different types and kinds between the tube type and the tubeless, and the nylon and rayon. Then the different grades or quality of tires. And therefore—

Q. You mean premium line, first line, second line— A.

That's right, second line and third line, sir.

Therefore it's almost impossible for a dealer to have adequate stock under those conditions.

Q. He doesn't have either the room for it or the money

to utilize in stock, I suppose? A. That is true, sir.

Q. Well, when you said that a good stocking dealer would have 40 tires you meant that that was the extent to which—the maximum stock the dealer would have, is that it? A. That's right. I don't know of any dealer we

have that has any more than 40 tires.

Q. And since 40 tires wouldn't cover very many of these different sizes and types, what is the consequence? A. That result is that the dealer that has a sale for one or two tires may have it in stock, but where—because they try to get two or three of each, or possibly four in some sizes. And the result is that he sells the set of our tires—he usually needs immediate delivery on them.

(5068) Q. One or more tires? A. That's right. Now, we have had occasion in the evening, or even Sunday once in a while, which most of our stations are open, that they

would need an emergency delivery on a Sunday, which we furnish them. They usually will call my partner or myself at home, and we do take care of that.

Now, we feel it's important, because it's helped increase our business, and we have operated that way since we've

began.

Q. Do all of your dealers the whom you sell stock 40 tires? A. No, sir, they do not.

Q. How many of them would be stocking in that order?

A. We would possibly have ten.

Q. Ten out of the 100? A. Yes, sir.

Q. Would stock in that order? A. That's right.

Q. Now, are there any special techniques that a service station dealer must have in order to deal in tires? A. A dealer must know what a tire cost him, how much he wants to make on the tire, he must be able to evaluate the used tires that he's taking off of a car because there is some resale value in that, and he must recover some profit in it. He must know how to handle a customer as far as selling him on the quality of a tire.

(5069) Q. What do you mean by that? A. He must know the difference between—for instance, our Safety-S tire, our third line tire. Then we have our deluxe tire, which is our second line, and the Deluxe Silvertown, which is our original equipment tire. And he must know all of those things in order to meet competition.

You might have a fellow come in and say that, well, "I have a price of so much on a tire, and what can you do for me?" He must know enough by knowing his cost on tires what tire the customer is talking about. And also he must know what to do if a person gets a defective tire, what to do about it and how to handle it.

Q. What is that problem of a person having a defective tire? What's the adjustment problem? A. The adjustment problem—and we have tried to work with our dealers

that they would be in a position to know a defective tire against a tire that's not defective, where they should adjust it. And we recommend to our dealers and try to put across the information that they take care of their customer now. In other words, not to put him off, well, to-morrow, or next week, or so. They take care of him now. If they are in doubt, then tell the customer, "We will have to send the tire in," which they will send in to us; and we give them the information whether it is adjustable or not.

(5070) He also must know how to adjust tires. Our adjustment policy is that the customer pays for the service that he gets out of the tire. In other words, if the 100-level tire, which has 11/32 on it is wore down to 5/32, or 6/32, he must know that it's 50%. In other words, how

much to charge the customer. That is important.

Q. And do I understand that your dealers, your service station dealers, are authorized by you to make adjustments on their own which you will honor? A. That's right, sir.

Q. At the time the customer brings the tire in? A.

That's right.

Q. And if they're in doubt about whether or not it's adjustable, an adjustable item, then they call you and you pick up the tire and determine it immediately? A. If we can. If we cannot, then we again will further—or take it into the tire service department of the Goodrich Companion Chicago and get final approval or rejection on it.

Q. Now, does the dealer have to be, in order to be trained to sell tires, be trained as to the quality and the types and designations of competitive tires too? A. That, sir, is information that, the dealer must have if he is going to do any kind of a job in selling tires. It's a matter of education. If the dealer doesn't know what he's doing he'll be afraid of tires, he won't want to sell them. (5071) He'll shy away from it. Which happens to a good many employees at service stations.

Q. Now, what about the inventory control problem in connection with a station's supply of TBA? A. That is another thing that we have offered to dealers when we go out and solicit them. We have what we call an inventory control guide book. It's furnished to us by Goodrich Company, and it has listed the number of products that we normally sell along with spaces for other products that he might have in his service station. And we try to get them to carry-for instance, in accessories, oh, a month's supply of polishes or other, hoses, or belts, and things like that. We call on them every week and we can refill his stock. Our salesmen that call on the stations, if this man is set up on the inventory control guide and carries six cans of one type of polish, or three of another, and he has sold one or two, or whatever it may be, that is what our salesmen write up as his order to put in his stock. In other words, we try to eliminate back room stocking of merchandise.

Q. In other words, you don't sell him a case if he only

needs two of them? A. That's right, sir.

Q. And in how many of your stations have you been able to invite the dealer to adopt an inventory control system? (5072) A. That our salesmen have been taking care of, and in the last year I haven't followed too closely, but I would say we have eight or ten that do use the inventory control guide.

Q. And what is the fact as to whether those are Texas or other types of stations? A. To us it doesn't make any difference. Whatever station will accept that, we put it in there. And we had one occasion where we sold a Texas

station because of that reason.

Q. Who was that? A. Fifth Avenue Texaco in Gary.

Q. Tell us the circumstances of that. A. We called on the man and we presented the sales story to him, and we told him what we had and what we had to offer, and we would like to have him try it out, which he did accept,

I went back a year later and checked with him specifically on how this worked out, and Mr. Osman commented that his tire, battery and accessory business had been greater than ever before; and his inventory is the lowest that it had been for several years. He was happy about it. And it has been another promotion for us to gain business.

Q. And what is the nature of the training the dealer must have in order to sell batteries! A. Batteries service stations should know how many months guarantee there is for service units that they have on the battery; he must know his price on batteries; he must know his (5073) price on batteries; he must know his cost on batteries. In other words, it's the old trading game which we have, just the same as in tires, and everybody comes in with a dead battery, "well, how much are you allowing me for my old battery?" And they must have a program set-up on that. They must also know how to tell when a battery is defective, by testing the cells. There are two methods that service stations test batteries. It's by the hydrometer method which tests the electrolite in the battery, or the cell tester, which gives you the top-you put the cell tester on the posts of the battery.

Q. Are you familiar with wet charge batteries and dry charge batteries? A. Yes, sir, we handle wet charge batteries—we handled wet charge batteries up until—

Q. Will you tell us about it? A. I think it was 1954, or '55, when Goodrich introduced the dry charge battery. And the wet charge battery is made up at the factory, and delivered to us or to a warehouse. We happen to get our batteries direct from the factory, which is close by. You have a certain amount of what we call a shelve life that wet—that—in a wet battery that you don't have in a dry charge battery, and the reason for that is, a wet charge battery, when it sets, it's all been charged, the acid is in it, and it gets a certain amount of coating that covers

like an insulation over your plates of the cell. (5074) It is very small, but over a period of time if you keep it on the shelve for any amount of time it will build up, and unless you take that battery and charge it, say, every thirty days for ten minutes to a half hour, or keep it on what we call a trickle charger, it will run down. It will run the battery down." It's the same where you might have a battery, set a wet battery on concrete. The concrete, the moisture, will draw the battery and run it down. Whereas in a dry charge battery, it's made on the same order that a wet charge battery is made at the factory, but they take out the electrolite and dry all of the cells in the battery. Then they put it together and seal the air vent on the battery. We get it then in that form, it's all been charged, and the only thing you have to do to activate it is to add the acid and usually on all of our price sheets it tells the quarts of acid that is required for each type of battery, and put it on a ten minute charge. Now, if you keep-

Q. That is ten minute charge? A. Yes, it is. There is a in our batteries we have a little tag that says on there

"charge for ten minutes."

Q. And it's just like a quick-frozen dessert or piece of meat, isn't it, which when you get it out and want to fry it, why, it can be prepared. A. Well, yes, you might call it that way.

Q. Now, what is the result in terms of dealers handling (5075) batteries when the dry charge battery came on the market as compared with their willingness to stock batteries before that? A. You had some sizes in batteries, and just to give you an example, up until the first of July we have thirty-nine different types of—and sizes of batteries. And you have some sizes naturally that don't move as much as others. Now, by having thirty-nine—that is the complete line, and I don't mean to say that all the dealers stock that many different types of batteries. But

in order to have a complete coverage of every quality battery in every group, that's how many there are. And you could take the dry charge and it would cut it down in stock a whole lot, and these fellows that would have a battery that didn't move too slow, for instance, what we used to refer to the High Ford battery, if you had it on—you could keep it on the shelve and we know the dealers that have had them for a year, they would deteriorate and some of them lost money by keeping them that way.

Of course, the dry charge is an advantage in that respect that you don't have the shelve life. In other words, when the dry charge batteries are activated by pouring

in the acid, that is supposed to be factory fresh.

Q. Is it in fact? A. Yes, sir. Our experience since we have had dry charge batteries is that we do have less failures.

(5076) Q. Now, what are the merchandising programs which you carry on with your dealers in helping them toyou told us about some of them, but what are others that you carry on? A. We have through the Goodrich Company what we call traffic builders. They are items that have been pre-tested at service stations somewhere in the country by the Goodrich people, and they are sold to us, or we go out and promote them at the service stations. It's an item that -for instance, we had plastic pails that sold for \$1.29. It's ordinarily a \$2.90 seller. Something to get the—give the dealer a chance to get people into a station. Along to tie in with that we have a direct mailing program, and the cost of that is paid partly by the Goodrich Company and partly by the dealers. We had this summer four pieces of mailing that went out, and it cost the dealer-in other words, 250 pieces of mailing each times these four mailings; or 1000 pieces—cost him a little bit under \$44.

Now, this ad is made up with Texas or Conoco or if it happened to be some other brand that is not on there, they

have an ad, Texaco gasoline, or oil, or if it happens to be in the fall they might have anti-freeze or something like that, along with tires and batteries and some accessories that they feature on that.

Now, that goes to—the dealer doesn't do any work on that. He might specify a certain area that he would (5077) want it sent to. In other words, he would block off two or four blocks or send it there. Or he might give his own list and have it mailed to them. The Donnelley Company here in Chicago does all of the work of preparing it and mailing it.

Q. And how many of your one hundred dealers take part in that? A. We have had this year sixteen that were in the direct mailing program.

Q. And what is the fact as to whether or not most of them were Texas and Conoco dealers? A. They are mostly Texas and Conoco.

Q. Now, in that connection, what is the role of the oil company, if any, Texas Company, Conoco Company, in this merchandising program? A. They help us present this to the dealers. This year our Goodrich territory man in Texas—and the Texas man went to some of the stations and presented this advertising program. I did some of them. In past years we have had dealer meetings where we have asked the dealers to come in and sit down, and we have presented the program to them. Some of them signed up at the time and some we followed up with calls and got them to sign up on it.

Q. And what is the role of the oil companies in the training of the dealer in these various problems of selling tires, (5078) selling batteries, etc? A. In our area we have had the petroleum people—if they have a problem they usually refer it to us, and we will go along with them or we will make the call ourselves and try to get the account straight-

ened up. If he does have a problem, we help him get done what is needed.

Q. I see. Now, you said you had 35 Texas accounts, I think, around that? A. Approximately; 30 to 35, sir.

Q. And what percentage of those are lessee accounts, if you know! A. I do not know, but I would estimate 20. It possibly may be higher, but I would estimate—it may be higher. I would estimate 20.

Q. Now, how many of these accounts are—were new stations, when you took them on? A. (No response.)

Q. Do you understand my question? A. Yes, I do, sir. I'm trying to think, because it's been over a period of years, of the years that we have had. And I would say we have had six or seven that we have had, new stations that have opened in our time.

Q. I see. And the other 28 or 26—28, were established dealers? A. That's right.

(5079) Q. At the time you took them on? A. Yes.

Q. Now, breaking those down, you said you handled Fisk at one time when you were a Conoco dealer? A. We did.

• Q. How many Texas dealers did you sell to while you were a Conoco dealer handling Fisk tires? A. Of the present day accounts that we have, three to my knowledge.

Q. And what happened when you took on Goodrich and dropped Fisk? A. We continued selling these accounts.

Q. In other words, you took them on as Goodrich accounts, swiped them from Fish to Goodrich, isn't that right? A. That's right.

Q. Now, the other 25 whom you got in to, and which were not new stations, who did they come from? A. Oh, I'd say a varied number of tires that they had. Some have been Firestone, some were Goodrich accounts. They were supplied by the store, or perhaps direct from the Goodrich warehouse in Chicago. We had some that handled Gates.

Q. Or via the Goodrich distributor, I think. A. That's right, sir. Gates and Dunlop.

Q. Now, with respect to Conoco, the 20 accounts that you have of Conoco, what was the source of those accounts (5080). At There again, we had some accounts that we had sold over a number of years, and of course our association as a Conoco operator helped us to become acquainted with some of the other Conoco operators through dealer meetings or advertising meetings that were held during the course of the year, and we went out and promoted the sale of tires with them.

Mr. Royall: Your Honor, this Respondent would like to move to strike that evidence relating to Conoco and have a standing objection to any other elicited so far as it affects Texas Company. I don't know—I don't hear anything that was—I want to preserve our opposition. That has been our position in the past.

Hearing Examiner Kolb: Well, off the record. (Discussion off the record.)

Hearing Examiner Kolb: On the record.

Let the record show that all testimony received referring to Conoco Company will be received subject to motion to strike by the Texas Company.

#### By Mr. Barton:

Q. Now, do you recall in connection with the Conoco Company accounts which you have, obtaining Nick Chaves at Hammond, Indiana? A. That is in East Chicago, Indiana.

Q. That's known as Nick's Conoco? A. Yes, sir.

(5081) Q. Now, will you explain the circumstances under which you obtained that account? A. Nick Chaves

started back when—in the Conoco service station when we were selling Fisk tires, and I was selling on the road. He would buy, oh, just very little merchandise from us. We got acquainted with him that way. As we went along and took on Goodrich, another distributor in Gary also had Goodrich tires, and he was one of his accounts. When the Gary distributor gave up handling tires, batteries and accessories, we called on him more frequently, and I personally did for about a year. We didn't get too far with him in selling him merchandise, and I switched the account over to one of our salesmen. He called on him for some time. And, oh, he would get an order once in a while, and then he had some difficulty with one of his other suppliers that he—

Q. Who was that supplier! A. He was being supplied out of Chicago by Chanenson Tire and Supply and J and E—excuse me, not J & E, but Brown Tire and Supply. I believe you spell it C-h-a-n-e-n-s-e-n.

Q. And what was the difficulty that Nick's Conoco was having with Chanenson?

Mr. Dias: I object, your Honor. Apparently at the time of this changing this salesman was handling the account. I don't know if this witness knows—

Mr. Barton: Now, if your Honor please, Mr. Chanenson (5082) got on the stand and explained about having lost Nick's Conoco in East Chicago to B. F. Goodrich, and I submit that it's proper to put in the explanation with this witness—which this witness is able to offer regarding that loss.

Mr. Dias: I don't know if this is the witness that can do that. That's my point.

Hearing Examiner Kolb: The objection will be overruled.

#### By Mr. Barton:

Q. You may proceed. A. We had called on Nick Chaves over the period of time which probably was two years or better from the time I first became acquainted with him, and as our salesman called on him he mentioned to him that he had some difficulty with an adjustment problem, with Chanenson, and he wasn't going to buy from him any more. Chanenson also had his salesman taken off of the territory. I don't know how much later it was in time, but Brown Tire and Supply was calling on Nick Chaves, supposedly—

Q. Brown Tire Supply was a sub-jobber of Chanenson? A. That's right, sir. And he went out of business. He went bankrupt. And from that time we have not—we have

gotten more of Nick Chaves' business.

Q. And what about a did you take any Conoco accounts from Cooper Tires! A. We had one account in Hobart.

(5083) Q. What was the name of that dealer. A. Paulson and Rippe, Hobart, Indiana. We had been selling Paulson and Rippe Fisk tires, and then they changed and began selling Cooper Tires. I don't know the period of time that they bought Cooper tires, but eventually when we got them back they told us that they were having trouble with Cooper and they were adjusting as many tires as they were selling for a while. And eventually they went back, and we are selling them, I would say, for the last three years. We have been selling practically one hundred per cent of their tires. We don't—

Q. Cooper Tires, they were requiring one hundred per cent adjustment on tires they sold? A. They said that their sales—they were adjusting as many tires as they were sell-

ing for a while.

. Q. And what is your experience with B. F. Goodrich

tires on adjustments? A. Our adjustments-

Q. What percentage do they run? A. I would say that, against our purchases, our adjustments probably run three per cent.

Q. Three percent? A. Yes.

(5084) Q. Now, Mr. Grelecki, you have gone around to most of these stations, these Texas stations you have sold to over the past several years, have you not? A. Yes, sir.

(5085) Q. And in the course of your calling on these stations you have observed whether or not those stations handle products, TBA products, which are not sponsored

products, haven't you? A. Yes, sir.

Q. And what, if any, non-sponsored products have you observed in Texas stations which you were engaged in selling? A. Do you mean by brand, sir?

Q. Well, yes, in general. What type of batteries have you noticed? A. Exide, Delco; we have some what they

call the Am-Plus.

Q. What is that, a price battery? A. Yes, it is. They do

have that as a price battery.

- Q. And what is the situation on accessories? Have you noticed competitive accessories? A. Yes, there are competitive accessories. In fact, for instance, we handle Champion spark plugs, and we have a number of accounts that don't buy Champion spark plugs from us, but they do buy them from some other source.
- Q. I see. A. And there are numerous items like that that are nationally advertised that are not purchased from us that service stations do buy.

Q. Have you noticed Firestone in some of the stations?

A. In our tire stations, no. Some that we call on for solicitation, yes, but not in our particular stations.

(5086) Q. Now, based upon your observation and your knowledge of what you sell to those dealers, what percentage would you estimate the non-sponsored items are of their sales in the TBA field? A. Do you mean as a whole

group or-

- Q. Let's take the accessory field. A. There again, you take certain stations that do more business than others, and it's rather difficult, not knowing what their total purchases are, to determine that, although if we went on the basis—base it on a station that does a fair job and we could determine by the number of dollars in volume that we sell them in accessories, and I would say that, basing it on dollars and cents, it would probably be fifty per cent.
  - (5088) Hearing Examiner Kolb: That is the question I was going to ask, whether your question referred only to the Texaco stations.

Mr. Barton: I limited it by terms to the Texaco stations.

stations.

## By Mr. Barton:

Q. Did you so understand it? A. Yes, the Texas stations, yes.

#### (5089) By Mr. Barton:

Q. What is the situation with respect to the Texas Company stations? A. In the Texas Company stations I would say 50 percent that we are selling in the accessories line.

- Q. What is the situation in the Conoco stations? A. There we don't do as well, probably 30 percent.
  - Q. What is the situation with regard to-

Mr. Barton: Strike that.

#### By Mr. Barton:

Q. Mr. Grelecki, are you familiar with the policy of the Texas Company with regard to the matter of their service station lessees handling sponsored or non-sponsored lines? A. Sir, I don't know the details of it; I have never had the occasion of it being explained to me.

Q. What have you found with regard to the independence of the Texas dealers? A. We have found that we have to deal with each dealer as the operation of the station, and the owners, as we call them, of the station, and it is up to us to sell them. Now, through the program such as the advertising program that they come out with, and the overall program (5090) of nationally-advertised material and merchandise it does help service stations.

Q. And it helps you sell goods to the service stations,

doesn't it? A. That is right, sir.

Q. And have you found that the oil companies which have a sales program in which you are working with, it increases the sales of these service stations for your TBA? A. That is true. Any station that has a definite program will do better than what you might call the hit and miss ones, that go along and take it as it comes. For example, like with our tire business this year, when it has fallen off, by having our hand bills it is a little more effort to make sales and it is a program for increasing sales and that does help.

Q. In other words, you wouldn't have to sell so hard if these dealers were instructed to handle your products, would you? A. No, I don't imagine we would. I don't know

whether we would be happy about it or what, but we can honestly say we have never been handed anything and somebody come and say: Well, here, you are going to supply that man,—anything of that nature.

Q. You have gone out to sell these dealers? A. It has taken us a number of months and even years to (5091) sell them.

Q. You wailt the dealers up by giving them service as they required it, haven't you? A. That is right; in addition on a new dealer we have a financial arrangement that we have gone along with. When he buys a certain amount of merchandise to open a new station, he will pay us half or 30 percent of his purchase, and then we let him pay it off at \$100 a month for a year or 15 months, or whatever the case may be done. We have done that and we still have accounts that we carry that way. That has helped, because it seems like most of the fellows who own a service station are limited in finances.

Q. Have you ever heard of a Texas station being threatened with a lease cancellation because of handling competitive items? A. We have never had that occasion.

Q. Have you ever heard of a Conoco lessee being threatened with loss of his lease for that reason? A. No, sir.

Q. Have any dealers ever complained to you that they felt obliged to buy from you because of the oil company's sponsorship? A. No, we have never had that happen to us.

(5092) Q. Mr. Grelecki, have you in the course of your selling had occasion when you have trained service station dealers who had no experience in the TBA business to be good TBA merchants? (5093) A. Yes, we have had that.

Q. And will you give us an example? A. John Wileygura; 3007 Grant St. He went in a new Texaco service

station that never had any previous experience in the service station business. He was an electrician by trade and when they went into this station we went out and sold him on our program of going along with finances as well as with the advertising, and the other material help we could give them.

We went out and set up their service station so that they would be ready to operate; we set up their shelves, their stock of tires and batteries; we even helped them obtain things like a cash register and some other items they needed for a service station which we did not or we do not sell. We went along and tried to help them with their bookkeeping.

Then we spent some time in the station with them, showing them how to sell merchandise, and John was a good, successful operator. He operated the station for about 18 months and I don't believe that his gallonage was ever below 18,000 gallons from the very first month that he started.

Q. And that was the result of your efforts and the Texas Company's efforts in training him to be a well-rounded dealer, wasn't it? (5094) A, Including the—

Mr. Dias: I object to that. I don't know if you can trace that to the stocking of the station with TBA. The fact is he sold 18,000 or 20,000 gallons of gas, and we have to draw our own conclusions whether that was the result of the stocking. Maybe John was an excellent operator. Maybe he stayed long hours; I don't see how you can relate this to the stocking.

Hearing Examiner Kolb: I will overrule the objection.

### By Mr. Barton:

Q. Go ahead. A. He did also an exceptionally good job in the selling of tires and accessories during the time he was in business. He gave it up after, I think, 18 or 20 months for some family difficulties which we do not know about. There is another party by the name of Frank Hardeson who operates this station but it was a case of a new operator that I think I started right, and we feel that it has helped him because we have gotten a good business out of it and even today the station is doing a good job of it.

Mr. Barton: Your witness.

## Cross examination by Mr. Dias: -

Q. Getting back to this John Wileygura, can you tell (5095) when that occurred? When did this situation occur that you are just describing? A. I believe that was three years ago.

Q. Three years ago! A. Yes.

- Q. Now, would his be one of the new stations that you opened up that you mentioned earlier in your testimony? A. He was one of the new stations that we helped open, yes, sir.
- Q. And I think you stated that there were about six or seven others that you helped open? A. Right.

Q. Were those others also Texas stations? A. Yes.

Q. And in each instance, or if it differs, you might tell me now,—in each instance were you notified by the Texas Company or by the Goodrich Company home office, that these new stations were being opened up? A. In two of these stations we received a letter informing us that they had obtained an operator and they were passing the information on to us and we should feel free to solicit them for their business.

Q. Is that the language they used in the letter, if you recall? A. As close as I remember, yes.

(5096) Q. That was two of the six or seven? A. Six, I believe. The one was a Conoco station.

Q. One was a Conoco station? A. Yes.

Q. When did you speak to these two now when you were notified, did you speak to them before they moved into their station? A. Yes; in fact, we contacted the one in the evening of the same day by telephone. We made a date with him to meet at our store and he came in, and we laid the program up and by "we", I mean, my partner, Michael F. Niemieco and myself, and we showed them what we had to offer.

Q. Did you close the transaction at a later date with them? A. The one we did, and the other one took two days. He said he was going to think it over.

Q. When the second one closed the transaction with you was that still before he opened the station? A. Yes.

Q. So that when he opened the station you had a supply of TBA in there? A. Yes, we set him up with initial stock.

Q. In each of those instances can you give me some idea of the value of the initial stock? (5097) A. I would say approximately \$2200.

Q. \$2200? A. Yes, sir; that included some equipment.

Q. Can you give us some idea of the number of tires that were included, and if the two differ, you might specify how they differ? A. Approximately 25 tires.

Q. And the number of batteries? A. Ten.

Q. And what type of accessories: Filters? A. Filters, polishes, fan belts, hoses, chemicals, flashlight batteries, and things like that.

Q. And if I understand correctly it was the Goodrich tire, Goodrich battery and Goodrich accessories, is that correct? A. Well, we purchased them from Goodrich; yes.

They might have been Simonized or DuPont or something like that, but they were purchased from Goodrich by us.

Q. Yes. Now, were either of these—that is true of both

stations, is that correct? A. That is right.

Q. Now, about those other five, the other four,—4 Texaco and one Conoco, how did you find out or learn the (5098) identity of the new operator in each of those instances? A. In the three cases, if I remember correctly, we got them from some other Texaco operator or our salesman, who learned that; when we cover the routing we watch for new stations that are being built so that we can get in there and we try to locate and find out who the operator is going to be.

We got the information that way and tried to contact him at home. In the one case at one of our stations where we were supplying, they told us; in fact, I was calling on him that day, and he asked me if we could make an appointment with him, that they were putting in the new station and he knew the operator, and they had talked about it and he recommended to him that he buy from us because of our closeness to the location.

cause of our closeness to the location.

Q. Was this a Texaco operator you talked to? A. Yes.

Q. And he is the one who told you about the new Texaco operator? A. Yes.

Q. Did you, in that instance, negotiate with the new operator and also stock his new station with Goodrich TBA before he moved in? A. That is right, sir.

Q. And did his volume of purchases run about the same (5099) as the first two you mentioned? A. In his case not quite as high. You mean the initial stock, the opening?

Q. Yes. A. Yes; it will be approximately \$2000 to \$2400.

Q. Is that generally true with new stations, that that is about the amount? A. That has been our experience.

In order for him to have a balanced stock it requires about that much.

(5100) Q. Now, does that account for all the new stations that you mentioned? A. I believe so, yes.

Q. As to those stations, did you finance any of those under your system that you mentioned before? A. Yes, we financed all but two.

Q. In that connection did Goodrich underwrite any of the loan? A. They have a program but we do not take advantage of it.

Q. Yours is separate and distinct? A. Yes.

Q. I believe you were asked what percentage of the accessories that were sold to Texaco stations, the Firestone accessories, and your answer was 50 percent, or right about that. (5101) A. Of our accessories; we handle Goodrich.

Q. And 30 percent to the Conoco accounts? A. That is right.

Q. How about tires; first as to the Texaco stations?

A. I would say that we sell 75 percent of their tires, and
I am speaking of the stations that we supply.

Q. Yes; that is the 30 to 35 Texaco stations? A. That

is right.

Q: And how about the Conoco! A. The Conoco sta-

tions will run 50 percent.

Q. Now, as to the batteries, can you give us some idea of the percentage of the batteries that you sell to the Texaco stations? A. Possibly 80 percent.

Q. 80 percent? A. Yes.

(5102) Q. And how long did you stay in that station?

A. We were there until we opened our present location on July 1, 1953.

Q. Somewhere in between there you were just an employe, as I understand it; am I correct? A. No, from the time I went in to the service station, I went in as a partner.

Q. You were a partner from 1948 to 1953 when you discontinued and went into the wholesale business? A. Yes, but we did have a change in partnership. There were three of us and for health reasons Mr. Bolda moved to Florida, and since that time Niemiec and myself have been partners.

· Q. Since 1948 when did you become a distributor? A. We were handling Fisk prior to my time of joining the other fellows. They had been in the distributing business.

Q. Now, commencing in 1948 when you became associated with them what were you distributing then? A. Myself?

Q. I mean this partnership? A. They were handling Fisk. I don't know how far back.

Q. Then when was it that you took on the Goodrich line in that partnership? (5103) A. In September of 1952.

Q. As I recall at that time you dropped the Fisk and took on Goodrich and you were also carrying Goodyear, is that correct? A. Yes.

Q. Do you recall when you took on the Goodrich line the number of Conoco stations that also took on the Goodrich line from you; in other words, purchased their Goodrich equipment from you? A. Sir, I don't know the exact number of stations.

Q. There were some, were there? A. Yes; there were some that we sold. We didn't get them immediately but we did sell them, and we still have some accounts today.

Q. And also at that time you were a Conoco operator, were you not? A. That is right.

Q. Do you recall in about that time the Conoco Oil Company meeting at which the taking on of the Goodrich line

was discussed? A. No, sir; not at a Conoco meeting. We had some of our own meetings which we sponsored with Conoco dealers asking them and explaining what we had to offer, but we had not been to a Conoco meeting.

Q. There was no Conoco or Goodrich representative there! (5104) A There was a Goodrich man at the

meeting.

Q. But no Conoco man? A. No.

Q. How about Texaco stations; did you commence selling some Texaco stations this line when you dropped Fisk and switched to Goodrich? A. Yes.

Q. Can you recall how many of those there were? A. I would say, in the first six months, we probably obtained

ten.

Q. Ten? A. Yes.

Q. And do you recall the total number of Texaco stations you were selling to at the time? A. That is what I am referring to. We obtained ten but when we took on Goodrich we had three we were selling Fisk.

Q. They switched to Goodrich? A. Yes.

Q. Do you recall whether or not they were lessee stations? A. The two were not; one was.

Q. I see. Then, in a six months' period, you obtained

about ten Texaco stations? A. That is right.

(5105) Q. How about the other seven? Are they lessees, do you recall? A. Yes; the majority of them I would say were. If you want a definite figure I probably could possibly go through, one at a time, and tell you which one it is.

Q. If you want a minute or two to think about it, and you can give us some more detail, do that. A. I believe there are five that were lessees, and two owned their own stations, or one owned his own station; the other one is leasing from the individual who owns the property.

Q. I see. Do you know how many Texaco stations there are in your territory right now? A. I do not.

Q. There are more than the 30 to 35 that you sell to?

A. Yes, there are.

Q. And is the same true of Conoco; there are more Conoco stations than the 20 to 25 you sell to? A. There are.

Q. And on the Ohio Oil, there are more than the two

or three you sell to? A. That is right.

Q. Are there other Goodrich distributors in your territory competing with you? A. Some that come from Chi-

cago do call on accounts out (5106) our way.

- Q. Do you know who they are? A. We have had Biltmore Tire out our way; Gardner & Kinsley; in fact, we have a couple accounts that Gardner & Kinsley sell along with us and have for years. We haven't been able to get their 100 percent business from them. Then there are the Goddrich company-owned stores in Hammond and in Gary, also.
- Q. And they sell to some of these Texaco and Ohio Oil and Conoco oil stations, is that correct? A. They must. We have no knowledge to what extent, but they must.

Q. How about Warwick-Lamby? A. Yes.

Q. Is that Warwick-Rasmussen, Inc.: A. They are Warwick, Lamby and Rasmussen.

Q. They are still Goodrich distributors? A. To my knowledge, yes.

Q. Are they in your territory, too? A. We have not

had them actively soliciting in our area.

Q. I believe you stated that the Goodrich territory man made calls with you, calling on these various Texaco stations and Conoco stations. Is that a man out of the Goodrich home office; is that what you had reference to? A. No, our salesmen. We call them territory managers (5107)

but it is our Goodrich representative who calls on us the same as I would be if I would be calling on the gasoline service station.

Q. But he is employed by the Goodrich Company? A. Yes.

Q. And you have that type of assistance from Goodrich; that type of problem; they would go around with you or your salesman making these calls? A. He spends one day each week with us and whatever we need to take care of, he is there for that purpose.

Q. Does he visit only Texaco stations of Conoco sta-

tions? A. No. sir; the entire field.

Q. Do you occasionally have Texaco and/or Conoco personnel make the rounds with you or your salesmen? A. We haven't had— Oh, we have had in the years, maybe one, or two or three occasions that they have gone with our salesmen to call.

Q. Not more frequently than that? A. No, not where we have gone together. Usually it has been in our area, if the salesman runs into a problem he notifies us and we

go out and try to take care of it ourselves.

Q. When you stated that Goodrich first came out with a tubeless tire, I wondered: Was Goodrich the first to come (5108) on the market with a tubeless tire? A. That is right. Goodrich advertised: "First in Tubeless"

for several years.

Q. Have you had much difficulty with those tubeless tires? A. If they are properly mounted and serviced, I would say that we have less problems with them than with the tube-type tire. The problem that has been with them has been in service. In other words, they haven't been properly mounted; the valve stems will leak, or the wheels have not been cleaned, — there is rust and debris where the beads come on, and there has been some trouble with that.

Q. And there has been quite a bit of trouble, has there not? A. There has been some, yes.

Q. You mentioned that ten of your 100 service stations, am I right in that, — that you sell to about 100 service stations? A. That is right.

Q. About ten of them state Woodstock-40 tires; how many of those ten would be Texaco stations? A. Seven.

Q. And Conoco? A. The other three.

(5109) Q. In connection with wet vs. dry batteries, assuming that the distributor of wet batteries kept the stock fresh, would the dry battery have any advantage over the wet battery? A. In the handling of it; the storage problem is less with the dry charge than the wet charge battery.

Q. Is the dry battery smaller in size? A. No.

Q. It is the same size! A. It is lighter, because the acid, which is required from four quarts on up, is not in there, so it is approximately 8 to 9 pounds lighter, because of the acid.

Q. Because of the performance of the battery, and assuming, as I say, that the battery distributor kept this stock fresh, would there be any choice other than as to this wet problem, that you mentioned, between the two? A. That is right— People have through national advertising got accustomed with the battery which is advertised as a dry charge battery. Actually, in performance, if he could get the battery without the storage—but if you take into consideration as we handled Fisk batteries, they used to go to the Chicago warehouse from the factory, and they were stored there until they were ordered, and we got them and kept them on our shelf until the dealers ordered them, and whatever time the dealer kept them until (5110) he sold them to the consumer,—there were three storage problems in there.

Q. Suppose you don't have those three intermediate steps; suppose you have the battery salesman selling directly to the distributor, and the distributor willing to do what is needed to keep the wet batteries fresh, would there be any preference over the wet of the dry battery? A. I don't think there would be.

Q. You mentioned, in connection with tire adjustments, that your adjustments amount to 3 percent against your

purchases. A. I believe that is right.

Q. Actually it isn't until you sell the tire that you ac-

tually have trouble? A. That is right.

Q. What is your percentage of adjustments in connection with your sales? A. It would be smaller in connection with sales. Naturally we make a profit on our purchases so our adjustment problems should be less basing it on our sales on our retail level.

Q. I don't follow you. A. May I explain it this way?

Q. Yes. (5111) A. If we purchase \$10,000 worth of tires a month, then our adjustment of 3 percent should be 60, but for \$1000 worth of tires we wouldn't sell them at the same price but at \$1200 or \$1300, whatever the case may be, so if our adjustment is \$60, the adjustment would be only about 2 percent.

Q. Will you answer as to the number of units, that do not come back? A. I can't answer that. I can tell you how many tires we adjusted each month. I can't in purchases; I can't tell the number we purchase each month. I don't

have that. We adjust 30 tires a month.

Q. In your travels through your sales territory and in visiting at these various Texaco stations have you noticed Firestone tires in some of those Texaco stations? A. We haven't had too many— Are you speaking of the ones we supply or others?

Q. No. I am thinking more of those stations you are

hoping to supply. A. Yes, there are.

Q. And as to the stations that you do supply are there any Firestones in those stations? A. They buy some but they don't set them out on display.

Q. As to the stuff you are trying to sell, the Texaco stations you are trying to sell, do you recall how many (5112) of those stations you have seen the Firestone tire in? A. I think probably most all of them have some evidence of Firestone on display.

Q. Tires? A. Yes.

Q. Would that go for batteries? A. Not as fully as for tires.

Q. How about accessories? A. There again, being national— We advertise the merchandise and accessories; it is hard to determine.

Q. Would there be Firestone among those accessories?

A. There have been, yes.

Q. How long have you been a designated supply source for Goodrich supplies? Has it been ever since you have been handling the Goodrich line? A. I assume that. We were signed up as associate dealers or distributors.

Q. Do you have to make any report to the Goodrich Company as to the volume of sales to Texaco and Conoco stations? A. We report those sales each month.

Q. To each of the Texaco stations and each of the Conoco stations, is that correct? A. That is correct.

- Q. How much time does that take you to prepare those reports? (5113) A. We have a system where we have a file and we have filed each invoice in its individual file and in order to go through the month's supply, I would say it takes two hours.
  - Q. And you do that once a month, do you? A. Yes.
- Q. For all the stations that you sell to Texaco and Conoco? A. Yes,
- Q. And the same is true of Ohio Oil stations? A. Any stations that we sell.

Q. You mean any of those stations with which Goodrich has this commission arrangement, is that right? A. That is right.

Q. To whom do you send those reports? A. We send

those in to Columbus, Ohio.

- Q. Are you compensated in any way for the time it

takes you to make up those reports? A. No, sir.

Q. Does your firm have any sort of a direct arrangement with Texaco or the Texaco stations other than as a Goodrich distributor? A. No, sir, we have no arrangement whatsoever with any oil company. Since we have severed our connection (5114) with Conoco we have no relation.

## Mr. Dias: I have nothing further.

#### Redirect examination by Mr. Barton:

Q. You adjust tires whether or not they have been purchased, from you, do you not? A. That is right, under the adjustment program any B. F. Goodrich tires which bear its name and serial number which indicates it is not a factory second, if it is adjustable we will adjust, and the same is true when somebody may purchase a tire in some other part of the country, or one of our customers might be in some other part of the country, and he would have that adjustment privilege.

Q. And you feel free to solicit any Texas station whether or not you get a letter from Texas, don't you? A. That is right, regardless of who it may be; not only Texas but others, also, because that is how we get out business is by

solicitation.

Q. Continuous solicitation? A. That is right.

Q. Like calling on the telephone! A. We have never had an account that we obtained by calling them on the phone; we do not make it a practice to do that.

## Clayton Jackman, for Respondents-Direct

Q. Have other tire companies brought out tubeless tires (5115) since they were introduced by B. F. Goodrich? A. I believe every tire manufacturer today has a tubeless tire.

Q. And they actively promote their tubeless tires, do

they not? A. That is right, sir.

Q. How often does the B. F. Goodrich territory manager call on the Texaco and Conoco stations with you or your own salesman? A. As often as we feel is necessary. We have no set time or number of calls for him to make.

CLAYTON JACKMAN, called as a witness on behalf of the Respondents, having been first duly sworn, was examined and testified as follows:

# Direct examination by Mr. Barton:

Q. State your name and address. A. Clayton Jackman; 1512 Northwest Avenue, Jackson, Michigan.

Q. What is your business? (5116) A. B. F. Goodrich

tires, batteries and accessories.

- Q. What is the name of your business? A. Jackman Tire Service.
- Q. Where is it located? A. 1512 Northwest Avenue, Jackson, Michigan.
- Q. What is the area in which you do business? A. The city of Jackson, and Jackson County.

Q. Michigan? A. Michigan.

- Q. What is the population of that area? A. Around 75,000, I believe it is.
- Q. And in the county as a whole? A. That is in the county.
- Q. Pardon! A. That is car registration for the city or the county.

#### Clayton Jackman, for Respondents-Direct

Q. How long have you been in this business? A. Since a year ago, in May.

Q. And what did you do before that time? A. I oper-

ated a Gulf gas station, of Gulf Refining Company.

Q. How long were you in that business? A. 14 years.

Q. How did you happen to give up the Gulf station and go in the business as a B. F. Goodrich distributor? A. I thought there was more potential in the tire business, (5117) more chance for expansion, than in the service station business.

Q. Were you engaged in selling TBA while you were in the service station? A. Yes.

Q. What has been your experience there? A. Very good. While I was in the service station operation I sold tires and did a nice job.

Q. Pardon! A. I sold tires when I was in the service

station operation and did a beautiful job.

Q. And who are the customers of Jackman Tire Service? A. We are small, in the wholesale end; we have approximately 22 dealers. I call on Ohio Oil dealers, Marathon, and Standard and Sinclair.

Q. Sunoco? A. Yes; on Sunoco and Mobile, and Pure

Oil.

Q. How about Gulf dealers; do you call on them? A. Yes; we have some Gulf dealers.

Q. Do you have some auto dealers also? A. New car dealers, and also used car dealers.

(5119) Q. How did you obtain the Marathon accounts? What was the basis upon which you obtained them? A. When I went with Goodrich, just a little over a year ago, they were being supplied through the B. F. Goodrich territory salesmen out of Detroit, and when I took on Good-

#### Clayton Jackman, for Respondents-Direct

rich, as a wholesaler, he offered those accounts to me, providing the dealer would go along with my program.

Q. Yours was a more convenient supply point than at Detroit? A. A more convenient supply point than Detroit, yes.

Q. Are you familiar with the policy of the Ohio Oil Company selling Marathon with respect to their TBA program and the policy which they have with regard to the independence of their dealers? A. Well, yes, to some extent.

Q. And what is the basis for that understanding; will you explain to his Honor? A. For example, back in Janu-

ary of this year they had put in a new dealer.

Q. A new station? A. No; the station wasn't a new station. It was just a change of operators, and they put him in on Monday, which was my calling day there, and in the afternoon I made my (5120) regular call and at that time I met the new operators along with the Ohio Oil Company representative who was Mr. Beatty and he introduced these operators to me, and through our conversation these partners had previously been salesmen from another supply point in town here; they made the remark they didn't feel that they could do business with me.

Mr. Beatty, the Ohio Oil Company representative informed them that they did not have to do business with me, but he thought if they would listen to what I had and some of the help that we could assist him with, that perhaps they would be interested as time went on. So I called on those fellows for approximately four weeks before I got an order out of them, and since then there have been good relationships between us.

Q. In other words, you finally sold them. A. I finally sold them, yes.

Q. Now, do you notice in the course of going around to the Marathon accounts, competitive items which you do not sell them displayed in their stations? A. Oh, very much so.

Q. What are some of the competitive items? A. Delco batteries, Gates fan belts, various polishes, other makes, and radiator hose such as Thermoid.

Q. And it is openly displayed in their stations? (5121)

A. Yes, sir.

Q. And have any of the dealers ever told you that there was pressure put on them to hide those or not to deal in those non-sponsored items? A. No, sir.

Q. Now, in connection with your selling to Ohio stations, do the operators of those stations obtain any sales assistance, merchandising assistance from the Ohio Oil Company? A. Yes, they do.

Q. And what is the nature of that assistance? A. In their gain advertising, co-op advertising, it is called window display, such as merchandising the products of their line, and also of the B. F. Goodrich line.

Q. How about in connection with the training of the dealers? A. Well, they have— Well, for an example, these new dealers we were just talking about that hadn't had any service station experience other than calling on service stations as salesmen, so the Ohio Oil Company sent one of their trained men in to train those boys. Now he was there for, I believe, three or four weeks training those boys for service station operations, pointing out to them how to sell, how to merchandise, how to get more business.

Q. What is the result, if any, in the sales which the (5122) Marathon stations make, as compared with the other oil companies whom you sell who do not have those programs? A. Of the dealers, again, who I call on, the Marathon dealers are more prosperous; they seem to get more business which, I believe, being TBA-minded creates

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### Clayton Jackman, for respondents—Cross Loy Spradling, for Respondents—Direct

neatness in the service station; they look like they are in business, as you drive by. I believe most of them are becoming more healthy than some of the service stations which have no help from their own company.

Mr. Barton: Your witness.

#### Cross-examination by Mr. Dias:

Q. I am assuming that Marathon is the trade name of Ohio Oil Company; is that true? A. That is correct.

Q. You also mentioned something about cooperative advertising. Will you fully explain that in connection with the assistance from Ohio Oil Company! A. They have the co-op gain advertising in which they have eight mailing pieces which go out throughout the year, advertising their merchandise, — tires and batteries and what have you, and in the winter months they would advertise anti-freeze or, a lot of times, we also have the traffic builders, which, if the dealer is handling that traffic builder, they advertise that.

(5128) LOY SPRADLING was thereupon called as a witness for the Respondent and, having been first duly sworn, was examined and testified as follows:

#### Direct examination by Mr. Lorenzen:

- Q. Do you want to give your name and your home address to the stenographer? A. Loy Spradling, 812 12th Avenue, North, Buhl, Idaho.
- Q. What is your business? A. I am a service station operator.
  - Q. What sort of gasoline do you sell? A. Texaco.

- Q. And do you lease your station? A. Yes, sir.
- Q. From whom? A. From the Texas Company.
- Q. That is one of these leases that renews itself each year unless it is cancelled at the end of any year? A. Yes, sir.
  - Q. For how long have you had a lease like that? (5129) A. Eight years.
- Q. At the same location? A. At the same location. I opened the station there.
  - Q. Was it a new station? A. A new station, yes..
- Q. How did it compare with the other service stations in your neighborhood? A. It was the nicest station in town; the newest; modern.
- Q. What is the gallonage of your station now? A. About 28,000.
  - Q. Do you handle TBA? A. Yes, sir.
- Q. Will you tell us why you handle it? A. Well, to make a good profit. Also helps the sales of my gasoline and oil. And it is a one-stop service, in other words.
- Q. It goes both ways: the gasoline helps your TBA, is that right? A. Yes.
- Q. And your TBA helps your gasoline, is that right?

  A. Yes.
- Q. Now, since you have been a lessee dealer at this location, have you had any knowledge of the Texas Company's TBA policy? (5130) A. Yes.
- Q. What is your understanding as to what it has been? A. Well, they sponsor B. F. Goodrich and Firestone, and suggest it to you—to have it; otherwise you are free to handle whatever you want to. Get it, your TBA, any place.
- Q. And it has been your understanding that you could get your TBA any place? A. Yes.
  - Q. In fact, have you done so? A. Yes, sir.
- Q. Now, before you obtained this new station, and before the signed lease was delivered to you, was it known to

the representatives of the Texas Company what kind of TBA you were going to handle? A. Yes.

Q. And what kind of TBA were you going to handle? A. U. S. Rubber—U. S. Royals.

Q. Tires and batteries? A. Tires and batteries.

Q. Did you, in fact, open your station with U. S. Royal tires and batteries? A. I did.

Q. Have you continued to handle them? A. Yes, sir.

(5131) Q. Now, tell me from where do you get your supply of U. S. Royals and batteries? A. I get them direct from Salt Lake City, 255 miles.

Q. That is 255 miles away? A. Yes.

Q. Is there a Firestone supply point closer to you? A. Yes, sir.

Q. Where is the Firestone supply point? A. It is around 17 miles from me. A truck comes to my door every day.

Q. The truck with the Firestone tires comes to your door every day? A. Yes. They deliver my gas. They also supply tires.

Q. But your main product is U.S. A. Yes.

Q. Your station is identified with U.S. signs and decals, is it not?, A. Yes, sir. Windows got decals on them. U.S. Royal signs outside.

Q. About how many U. S. tires do you stock? A. Well, around 200, 250.

Q. Is that 200 to 250? A. Yes, sir.

Q. Do you stock any Firestone tires at all? A. A few. (5132) Q. How many? A. Approximately 20 tires.

Q. Will you state why you stock any of those Firestone tires? A. We have people that demand them. Tourists. And then a few local that will demand Firestone.

Q. Do you stock those Firestone tires because you are afraid the Texas Company will cancel your lease if you don't have them? A. No, sir.

Q. That has nothing to do with it? A. No.

Q. You handle those tires for your own business reasons, is that right? A. That's correct, yes.

Q. Now, you said you had some U. S. signs and decals. Do you have a large neon sign? A. I do have. Right by the banjo sign outside.

Q. By "banjo sign" you mean—? A. The Texaco sign.

Q. The one with the big "Texaco" star on if? A. Yes.

Q. And right next to it is this big Texaco—I mean the U.S. neon sign? A. Yes, sir.

(5133) Q. Now, how about your TBA, other than tires and batteries! Will you tell me from whom you buy your accessories! A. Well, I buy from the Motor Mercantile Company in Buhl, and Auto Parts Service in Buhl, and Bowes, that travels around from door to door, and several others. I buy from everybody.

Q. Are any of those sources of supply that you have mentioned Firestone supply points? A. No, sir.

Q. Or a Goodrich supply point? A. No, sir.

Q. Has anyone from the Texas Company ever suggested to you that your lease would be cancelled if you did not stop this practice of handling the U.S. and all these other accessories? A. No, sir.

Q. Have they ever suggested to you that they would-treat you badly in any other way? A. Not any way.

Q. That they would not pave your driveway? A. No, sir.

Q. Or paint your station? A. No, sir.

Mr. Lorenzen: I ask to have these two photo-(5134) graphs marked for identification as Exhibit 57-A and Exhibit 57-B.

(The papers referred to were marked Respondent's Exhibits 57-A and 57-B for identification.)

#### Bu Mr. Lorenzen:

Q. Do Exhibits 57-A and 57-B respectively show your outdoor U. S. Tire rack with the U. S. Royal Tire signs, and the showroom of your station with the U.S. decals in the windows? A. Yes, sir.

Q. And is that the way your station has looked for a

substantial length of time? A. Yes, sir.

Q. Was anything moved away when those pictures were taken? A. Not a thing.

Q. Do you have a picture of this neon sign in front of your station? A. No, sir; I haven't a picture of it.

Q. How long has that neon sign been there? A. It has been there about two years.

> Mr. Lorenzen: I offer these pictures in evidence. Mr. Dias: No objection.

Hearing Examiner Kolb: The photographs will be received in evidence as Respondent's Exhibits 57-A & -B.

(5135) (The papers referred to, heretofore marked for identification Respondent's Exhibits 57-A and 57-B were received in evidence.)

#### By Mr. Lorenzen:

Q. Are you listed in the Yellow Pages of your local

telephone directory? A. Yes, sir.

- Q. Under what product are you listed? A. Under U. S. Rubber Company. They pay half of that in there, too, for me.
- Q. They what? A. They pay half for the advertisement in the Yellow Pages.

Q. U. S. pays half and you pay half? A. Yes.

Q. Needless to say, all of your TBA is openly displayed, is that right? A. Yes, sir.

- Q. A Texas Company representative never told you to hide it. A. No.
- Q. Or threatened you if you did not discontinue displaying this U.S. product. A. No, sir.
- Q. Do you find that the Texas Company is of any assistance to you in the merchandising of your TBA? (5136). A. Yes: Very much.
- Q. What do they do for you? A. Well, they are always willing to help us display stuff, show us how to display it, and we get the Texaco Dealer Magazine, which I don't think you can beat any place for ideas. And then our dealer meetings that I attend all the time.
- Q. Do you get any tips at that meeting about selling TBA? A. Yes, I do.
- Q. For how long have you been attending those dealer meetings? A. For eight years.
- Q. During those eight years has any representative of the Texas Company ever made any threat to you or threats generally to the people at those meetings which would indicate that the dealers had to handle the Firestone or Goodrich line or some Firestone and Goodrich products or else their leases might be cancelled? A. No, sir; not ever.
- Q. Or that they would be treated badly in any other way? A. No, sir.
- Q. In the course of those meetings do you talk to other dealers? A. Yes.
- (5137) Q. Are there sort of social gatherings after the formal part of the meeting is over? A. Yes.
- Q. In the course of those meetings, have you had occasion to become acquainted with the Texaco dealers in your neighborhood? A. Yes.
- Q. Have any of those dealers at any time said to you or indicated to you that the Texas Company had threatened them in any way in order to require them to buy the Firestone or Goodrich line of TBA? A. No, they haven't.

#### Loy Spradling, for Respondents-Cross

- Q. By the way, your division office is Butte, is that right? A. Yes. And Los Angeles is head office for that district out there.
- Q. So you are in the Butte Division and in that Pacific Coast territory, is that it? A. Yes.

#### Cross-examination by Mr. Dias:

- (5138) Q. What is out on the coast? A. The Pacific—
- Q. The territory office? A. Yes.
- Q. How far are you from Butte? A. Oh, let's see. I don't know for sure. Probably four or five hundred miles.
  - Q. Four or five hundred miles? A. Someplace like that.
- Q. How close are you to Los Angeles? A. About eight.
- Q. Are you anywhere near Great Falls! A. About three hundred miles from Great Falls. Well, no; it is a little further than that.
- Q. Aren't you sort of a distributor for U. S. Royal? A. I am a franchised dealer.
- Q. Do you sell to other stations? A. I can. I don't. I haven't done any.
  - Q. You do not solicit business of other stations. A. No.
- Q. Do you have any idea of how many Texaco stations are in town? A. One.
  - Q. Sir? A. One.
  - (5139) Q. Are you it! A. I'm it.

FRED PRYOR was thereupon called as a witness for Respondent and, having been first duly sworn, was examined and testified as follows:

#### Direct examination by Mr. Lorenzen:

Q. Give your full name and your home address to the reporter, please? A. Fred Pryor, Whitehall, Montana.

Q. What is your business, Mr. Pryor? A. I am a Tex-

aco dealer. Run the station.

Q. Where is your station located? A. Whitehall, Mon-

tana. Legion and Main. Isn't that right?

Q. I think so. You said Legion. It's in Whitehall Montana, isn't it? A. Whitehall, Montana, yes. It's a small town of only 1200.

Mr. Dias: I am confused. Are you in the town of Legion or Whitehall?

(5140) Mr. Lorenzen: Legion is the name of the street, Mr. Dias.

#### By Mr. Lorenzen:

Q. For how long have you been a Texaco dealer? A. It will be ten years this Fall.

Q. Now, at this particular location how long have you

been? A. Three years.

- Q. Before that—incidentally, that is a leased station, is it not? A. Yes, it is.
- Q. And you lease from the Texas Company. A. That's right.
- Q. And you have one of these leases which renews itself each year unless it is cancelled at the end of the year.

  A. Each year.

Q. Is that correct? A. Yes.

Q. Before that you were in another leased station. A. That's right.

Q. Is the station you are in now a better station? A. Well, it is a new station. It is a brand new station. And really a nice one.

Q. A really nice station! A. A real nice station. Best

looking one in town.

Q. (5141) It is better than the one you had before.

A. Oh, yes; by far.

Q. Now, what sort of tires and batteries did you handle at that old station before you get this new one? A. Well, at the old station I started out with Lee and Delco. Lee Tire and Delco battery.

Q. And did you continue handling the Lee and Delco

products at the old station? A. Yes, sir.

Q. Right up to the time you got the new one? A. That's right.

Q. And in spite of that, the Texas Company leased you

the new station, is that right? A. Yes.

Q. Did the Texas Company representative know what kind of tires and batteries you proposed to handle at the new station when you signed the lease? A. He was there when I opened the station, and helped me open it up, and knew what I was putting in the new station.

Q. He knew that beforehand? A. Yes, sir; that's right.

Q. What did you put in the new station? A. At the time I opened up the station, I put in Lee Tires and Delco batteries.

(5142) Q. Now, tell us why you handle TBA at all in this station of yours. A. Well, that is to boost the gasoline sales and vice versa.

Q. If you figured they help each other in sales—well, did you figure that way? A. That's right.

Q. And you make money on it. You make money on

the TBA. A. Yes, sir.

Q. During the time you have been a Texas dealer, what has been your understanding as to the Texas Company's

TBA policy and its program? A. Well, they might suggest you to sell Firestone and Goodrich, but there is nothing forced on you. You use your own judgment.

Q. And you felt free throughout the time you have been with the company to buy whatever TBA you want? A.

That's right.

Q. And you have done so. A. I did so.

Q. Now, from whom do you buy your TBA supplies?

A. Well, there are several salesmen on the road, and I buy from several salesmen.

Mr. Dias: I am sorry, I didn't hear you.
The Witness: I buy from several salesmen.
(5143) There are all salesmen on the road that sell part of the ways on towns there. From Montana Hardware I buy my tires.

- Q. Where is that located, by the way? A. That is in Butte.
  - Q. In Butte? A. Yes.
- Q. About how far away? A. Thirty-two miles to be exact.
- Q. Is that close as you figure distance out there? A. That's close. That's real close.
- Q. And how about the Firestone supply point? Is that located in the same town? A. That is the same town where the Montana Hardware Company is, yes.
- Q. Tell us the name of some more people from whom you buy TBA? A. Well, I get my Delco batteries from the Texaco consignee there that runs the bulk plant.
- Q. You mean the Texaco consignee handles Delco batteries? A. Yes.
- Q. And you buy from him. A. That's right. He is right next door to me.

- Q. What kind of tires does he handle? A. He handles Lee Tires, or handled them when I opened (5144) up the station, and I bought his stock; and he doesn't handle any tires now.
  - Q. He handles none at all now. A. Not now.
- Q. Tell us some other people from whom you buy? A. Well, in Bozeman I get from Montana Motors and H. O. Motors. H. O. is in Butte. Then there are several others. I try to help them all out; they are just as hard up as I am.

Q. Do you buy from all of the suppliers? A. Yes.

Q. But I guess you leave the Firestone— A. I don't buy nothing from Firestone. They never call on me even. They go by the door; they got a truck on the road, but I don't know why he doesn't stop.

Q. You discouraged him, did you, when he tried to sell

you some years ago? A. I didn't discourage him.
Q. You just didn't buy from him. A. I didn't buy from

him, no.

Q. He hasn't called on you much since that time. A.

No. I haven't had no trouble with the man, though.

Q. But he does not call on you. A. He doesn't call on

Q. What kind of tires do you handle now? (5145) A. Mansfield.

Q. Are most of your customers local people whom you know? A. Most of them are ranch people around there. Then there are tourists.

Q. You are talking a little too softly for the reporter and for us to hear you, sir. A. It is all country drawing around the neighborhood.

Q. That is, your customers you draw from people you know around your neighborhood, is that it? A. Yes, that's right.

Q. Do you find that they will accept your recommendation as to the type of tire you sell? A. They believe in me.

Q. And anything you recommend, they will buy. A. That's right.

#### (5146) By Mr. Lorenzen:

Q. It is not as well-advertised as Firestone or Goodrich, however. A. I don't know whether it is here, but it is there.

Q. It is there. A. That's right.

- Q. It is a well-known line up in your community. A. Yes.
  - · Q. And it has good acceptance. A. Good quality.

Q. Good quality and good acceptance. A. Right.

- Q. And you find you can sell it. A. At a good profit. Yes, I can. I wouldn't handle it if I couldn't.
- Q. And the same goes for the batteries you handle: you can sell those and at a good profit, is that right? A. That's right.
- Q. And that is the basis for the choice of the type of TBA you handle. (5147) A. That's right.
- Q. You do not handle any Firestone or any Goodrich at all, do you. A. None whatever.
- Q. About how many tires do you stock? A. Oh, I would say about between 35 and 40, possibly.
- Q. Now, of all of the tires that you sell, about what per cent do you think you sell out of stock and how many do you have to sell on a basis where you have to pick up the tires or get delivery of them. A. About 75 to 80 per cent I have to pick up.
- Q. Has anyone from the Texas Company ever told you that they might cancel your lease or otherwise treat you badly if you did not discontinue this line of tires and batteries and accessories? A. No, absolutely not.

- Q. Do you find that your accessories have a faster turnover than your tires, that is, the stock you have in there turns over faster than in tires, the accessories turning over faster than the tires? A. Well, I believe we make a more of a profit off the accessories. They turn over more, possibly.
- Q. Do you stock any batteries other than dry charge? A. No, sir.
- Q. Do you find your customers have any preference, (5148) one way or the other? A. Well, if you explain it to them, they would rather have the dry charge, because the wet sits around for a while and deteriorates. If it sits around for a year, it is a year old.

Q. Has the Mansfield Tire Company ever furnished you with any decals to put on your windows? A. No, they haven't.

Q. Have they ever offered you any? A. No.

Q. So you don't have any tire decals on your station.

A. No tire decals. I have a display rack I pull out in front of the station each morning.

Q. And that is identified as "Mansfield"? A. That's right.

Q. And do you have a sign on your station which shows a Delco Battery! A. I have.

Q. And is that on the front of the station? A. That is up on the front of the station, up on the windows.

Mr. Lorenzen: I ask to have this picture marked for identification as Exhibit 58.

Hearing Examiner Kolb: It may be so marked. (5149) (The paper referred to was marked Respondent's Exhibit No. 58 for identification.)

Mr. Dias: I have no objection.

#### By Mr. Lorenzen:

Q. Does Exhibit 58 show your station with the Delco Battery sign over the door? A. That is right.

Mr. Lorenzen: I offer it in evidence. I understand there is no objection.

Hearing Examiner Kolb: It will be received in evidence as Respondent Exhibit 58.

(The paper referred to, heretofore marked for identification Respondent Exhibit 58, was received in evidence.)

#### By Mr. Lorenzen:

Q. How many years did you say you had been a Texaco dealer. A. Ten years this Fall.

Q. Have you attended dealer meetings? A. I have.

Q. Have you obtained any help from the Texas Company, at dealers meetings or in magazines, in connection with the sale of your TBA? A. Yes, sir, I have.

Q. What sort of help have you had? (5150) A. Well, in displays and through that magazine. It is a real nice magazine; and at the meetings. We have nice meetings and get-togethers.

Q. You have get-togethers after the meetings? A. Yes, sir.

Q. And do you talk to the dealers in your neighborhood who attend those meetings? A. Sure do. Go downtown and have a drink with them.

Q. In the course of those meetings, has any representative of the Texas Company ever threatened you in any way or threatened the dealers generally with lease cancellations or other bad treatment if they did not handle the Firestone or Goodrich TBA? A. I have never been threatened by the Texas Company in any way.

#### Fred Pryor, for Respondents-Cross

Q. Has any such threat been made at any meeting? A. No, sir.

Q. Has any of the dealers with whom you have gotten acquainted had any complaint to make to you that any threats were made to them by the Texas Company with reference to their sales of TBA? A. No, sir.

Q. Nothing like that has ever happened. A. No, sir.

#### (5151) Cross-examination by Mr. Dias:

Q. Did you give us your gallonage, Mr. Pryor? A. Well, at the present I pump about 800 gallons a week.

Q. Is that 800 a week? A. Right now. During the tourist season.

Q. That is the height of your season, is that right? A. That's right.

Q. What is it during the slow time? A. During the winter I have put in days where I didn't pump over 200.

Q. That is per week. A. That's right.

Q. And what is the population of your town? A. Around 1200.

Q. Are there quite a few Texaco stations in that town?

A. There is two.

Q. And that is you and one other? A. Two besides mine.

Q. And the three of you get together at these dealer meetings, is that the situation? A. That's right.

Q. What are the other two Texaco stations handling, if anything, in the TBA line? A. They handle TBA, but I don't know what they handle. (5152) They have to take care of their business; I have trouble enough with mine.

Q. You are sort of the foreign legion out there in the Texaco setup, aren't you. A. That's right.

#### Fred Pryor, for Respondents-Cross

Q. Did you say that the nearest town was Butte? Which was 32 miles away? A. Yes.

Q. After you leave the town of Whitehall, where is the next Texaco station? Is it Butte? A. I believe there is a Texaco pump at 19 miles.

Q. Nineteen miles towards Butte? A. Yes.

Q. How about going in the other direction? A. That would be 35 miles, at Three Forks.

Q. Are there any other ways out of town, east or west or north or south, if I have missed them? A. North is Boulder.

Q. How many miles away is that? A. That is about thirty-five miles.

Q. And is that the nearest Texaco station in that direction, sir? A. That's right. There isn't any other direction. Well, there is—

Q. But you don't go that way. A. That's right.

(5153) Q. You have been in that business for ten years? A. That's right.

Q. What about the first seven years? You mentioned these last three years; what was the situation during the first seven years. A. The first seven years I leased the station from the Texas Company. Let's see. That was two blocks up the street from where I am now.

Q. I have—well, that is a different station. A. Yes, sir.

Q. What sort of business did you operate there? A. Texaco. I was working for the Texas Company.

Q. And you carry Lee Tires, or carried Lee Tires at that time? A. That's right.

-Q. What was your gallonage in that station? A. Well, I kind of had to build that station up from the ground. It was very small.

Q. Your gallonage, then, I take it, was less than the gallonage here. A. Yes. I increased it as I went along,

and I was pretty well-liked and known. I worked for Shell and I brought some of the Trade from Shell up there.

Q. Do you have any other kind of business in addition

to this gas station? (5154) A. No.

Q. How many stations of all kinds are in town? A. Well, there is some— "76" is one.

Q. Phillips "66" A. There is two Standards, a Chev-

ron and two Conocos.

Q. Do you know whether or not any of those stations carry Firestone or Goodrich—any of them? A. To my knowledge, no. I wouldn't say that.

Q. I am talking about all the stations? A. That's right.

'I don't know.

Q. Is there a Goodrich store in that town? A. No, sir.

(5155) CLEATUS ROGERS was thereupon called as a witness for Respondent and, having been first duly sworn, was examined and testified as follows:

#### \*Direct examination by Mr. Lorenzen:

- Q. Would you give your full name and home address to the reporter, please? A. Cleatus Rogers. Alamosa, Colorado.
  - Q. What is your business? A. I am a Texaco dealer.
- (5156) Q. Do you lease a station from the Texas Company? A. Yes.

Q. And what is the location of that station? A. It is

at 4th Street and Denver Avenue in Alamosa.

Q. How long have you been there? A. Seven years.

Q. Before Mr. Dias gets at you, maybe you can discuss with me this gallonage of yours. What is your gallonage per month at that station? A. It would run approximately 20,000 a month.

Q. Do you handle any TBA? A. Yes.

Q. Will you tell us the reasons for handling it? A. Well, it helps the gasoline sales, and gasoline sales help TBA sales.

Q. Do you make money on the TBA? A. Yes.

Q. It is a profitable item in itself. A. It is.

Q. During the time that you have had that station, have you had an understanding as to the Texas Company's

TBA policy and its TBA program? A. Yes.

Q. What has been that understanding? A. Well, they recommend selling either Goodrich or (5157) Firestone TBA. However, I buy my TBA in several different locations—from several different jobbers.

Q. Has it been your understanding that you were at liberty to buy from wherever you saw fit to buy? A. Yes.

Q. And didn't you understand that that is part of the

Texas policy? A. That's right.

Q. Has anyone from the Texas Company ever told you that if you did not handle all or some Goodrich or Firestone TBA that they would cancel your lease or otherwise treat you badly? A. No.

Q. Nothing like that has ever happened, is that right?

A. That's right.

- Q. Would you tell me from whom you buy your TBA? A. Haynie Merchandise Mart, Motor Accessory and Parts Company, Bowes Distributors, Holland Auto Parts, and several minor jobbers.
  - Q. You buy from the Gates Rubber Company, too. A. Yes.
- Q. And where do you have your recapping done? A. At the present time I have it done with Red's Recapping in Salida, Colorado.
- Q. That is not a Firestone or Goodrich supply point, (5158) is it? A. No; no connection.

Q. Among other things, you handle the Gates fan belts and Gates radiator hoses, is that right? A. Yes.

Q. In fact, substantially all of your accessories come from some source other than Firestone or Goodrich, do they

not? A. That's right.

Q. What kind of batteries do you stock? A. At the present time I have Auto-Lite and Goodrich.

Q. And what sort of Tires do you stock? A. Gates and

Goodrich.

Q. How many Gates tires do you have in stock? A. Oh, approximately six. Maybe seven.

Q. And how many Goodrich tires do you have in stock?

A. I would say around four.

- Q. Out of all your tire sales, about how many are made out of stock and how much is made on a pickup basis? A. I would say eighty to ninety percent is made on a pickup basis.
- Q. You got the order for a tire, and then you get it and put it on, is that it? A. Yes. Our Local Gates distributor is right nearby.

Q. And do you find that the Gates tires has good (5159) acceptance up there where you are? A. Yes.

Q. Now, tell us why you handle the Goodrich tires and batteries. A. Well, originally we started out, or I started out with Goodrich exclusively. And in doing so, the consignee put in a consignment of tires and batteries. Consequently, the consignment cost me nothing until I replace the consignment.

Q. You mean all the stock that you carry is something that you do not have to pay for. A. That's right.

Q. And you do not have to pay for any of that until you sell it. A. There is no money tied up. None of my money is tied up.

Q. None of your money is tied up in inventory. A. That's right.

Q. Do you find that helpful to you? A. Very much.

Q. Do you think that is a good business reason for handling some Goodrich? A. Yes.

Q. Now this consignment arrangement has continued, has it, even though you also have now the Gates and (5160) Auto-Lite line. A. Oh yes.

Q. All the Goodrich which you have in your store is

still on a consignment basis, is that right? A. Yes.

Q. Do you handle these Goodrich Tires because you are afraid that the Texas Company will cancel your lease if you do not confidue to handle them? A. No.

Q. Now, do you display all of your tires and batteries and accessories? A. I don't display all of them. Part of

them are on the rack in back.

Q. Do you display all you have space for? A. That's

right.

- Q. And that includes all the accessories you buy, you say, from a place other than Firestone and Goodrich, is that right? A. That's right.
  - Q. And do you display the Gates Tires? A. Yes.
- Q. And you have a big Gates banner over the front door of your station, do you? A. Yes.
- Q. As well as the Goodrich decals for the Goodrich (5161) tires you handle. A. Yes.

Mr. Lorenzen: I ask to have this photograph marked for identification as Exhibit 59.

Hearing Examiner Kolb: It may be so marked.

(The paper referred to was marked Respondent's Exhibit 59 for identification.)

#### By Mr. Lorenzen:

Q. Is Exhibit 59 a fair picture of the front of your station? A. Yes.

- Q. And what is that banner in the middle, over the front door? A. Well, it says "Gates DeLuxe Nylon Tires at Rayon Prices."
- Q. And that is a Gates Tire advertisement, is that right, sir? A. Yes.

Mr. Dias: No objection.

#### By Mr. Lorenzen:

- Q. Has that Gates banner been up there for a substantial amount of time? A. I would say about three months; maybe more.
  - Q. Have you ordered a new banner? A. Yes.
- (5162) Q. This one is wearing out somewhat, is it?

  A. It is tattered and torn.
  - Q. And you have asked for a new one? A. Yes.
- Q. And will you put that up when you get it? A. When I receive it, I will.
- Q. Of all of the tires, batteries, and accessories, about what per cent do you estimate is bought from B. F. Goodrich? A. Oh, approximately ten to fifteen per cent, I would say.
- Q. And all the balance of it you obtain from some other source, is that right? A. That's right.
- Q. During the time that you have been a dealer, have you received any assistance from the Texaco Company in marketing your TBA! A. Yes.
- (5163) Q. What sort of assistance? A. We have our regular dealers meetings, approximately three or four meetings a year.
- Q. In the course of those meetings, have you become acquainted with other dealers? A. Yes.

- Q. And do you find you pick up at those meetings any information which is helpful to you in selling your TBA?

  A. Very much.
- Q. Do you also get the Texaco Dealer Magazine? A. Yes.
- Q. Do you find that that helps your marketing of TBA?
  A. Yes.
- Q. And that is irrespective of whether the TBA is brought from Goodrich or some other source. A. That's right.
  - Q. The suggestions are equally applicable. A. Yes.
- Q. In those dealer meetings you said you have had occasion to become acquainted with the other dealers in your neighborhood, is that right? A. Several.
- Q. And do you have social gatherings after the meetings? A. Yes.
- Q. At those meetings has any representative of the (5164) Texas Company ever threatened you or any of the other dealers with lease cancellations or any other bad treatment if you did not handle some of the Goodrich or Firestone line of TBA? A. We have never been threatened.
  - Q. In any way at all? A. In any way.
- Q. Has any Texaco dealer ever complained to you that any such threats had been made to him? A. No.
  - Q. You do not handle any Firestone, do you? A. No.
- Q. And of all the TBA that you sell, can you estimate about how much of it is in accessories? What per cent is in accessories? A. I would say around 65 per cent is accessories.
- Q. And the balance is tires and batteries. A. That's right.

#### Cleatus Rogers, for Respondents—Cross

#### Cross-examination by Mr. Dias:

Q. Where is Alamosa, Mr. Rogers? Is that towards Greeley or Cheyenne? A. It is towards New Mexico from Denver. It is about 245 miles from Denver—south.

(5165) Q. What is the size of Alamosa? A. Population about 7600.

- Q. And you have had this same station for seven years, have you? A. Yes.
- Q. And when you went into the station, as I understand it, you carried Godrich exclusively. A. That's right.
  - Q. Was it a new station when you went in? A. Yes.
- Q. Did you at that time, or while you were negotiating for a station discuss with the Texaco people the merits of Goodrich and Firestone and did they suggest that you carry one or the other? A. They suggested.
- Q. Yes. And you chose Goodrich, is that correct? A. Yes.
- Q. You mentioned something about receiving your Goodrich on consignment. I missed who it was that gave you this material on consignment. Who is that? Where did you get your Goodrich material? A. Well, it is a consignee, a Texaco consignee, at Alamosa.
- Q. Does the Texaco consignee also furnish you with the gasoline? A. Yes.
  - (5166) Q. What is his name? A. T. D. L. Menke.
- Q. Is he located in Alamosa? A. Yes. Six blocks from my station.
- Q. He carries the full Goodrich line, does he? A. No; only batteries.
  - Q. Not tires? A. No.
- Q. Where did you get your Goodrich tires from? A. Just at the present time he handles only batteries. He did handle tires.

#### Cleatus Rogers, for Respondents-Cross

Q. Tires, too, originally! A. Yes.

Q. When did he discontinue tires? A. About two years ago—two and a half years ago.

Q. And he carries no accessories? A. No accessories except batteries.

Q. Is there a Goodrich store in town? A. No.

Q. Is there a Goodrich distributor in town? A. A tire distributor, yes.

Q. Who is he? A. O. K. Rubber Welders.

Q. And what do you say that they handle? A. Well—(5167) Q. I take it they handle tires. Do they handle batteries? A. They just handle tires. Several different brands.

Q. I see. Nothing else? A. No.

- Q. Now, is there a Firestone Distributor in town? A. Yes.
  - Q. And who is he? A. Harold Foster.
  - Q. And what does he carry? A. Firestone.
  - Q. Firestone tires—! A. And accessories.
  - Q. All three—tires, accessories and batteries? A. Yes.
- Q. And he is a distributor, is he? What is his business? Is he a wholesaler? A. He is wholesale and retail.
  - Q. Tires, batteries and accessories? A. Yes.
  - Q. There is no Firestone store in town. A. No.
- Q. Now, how many other Texaco stations are in town?

  A. There are three others, besides mine.
- Q. Are they located anywhere near your station? A."
  Within ten blocks.

(5168) Q. And do you know those stations pretty well?

A. Yes.

Q. What do they carry? What sort of tires, batteries and accessories? A. Well, I don't know. I think one of them carries Goodrich—not exclusively. I know one carries Dayton Tires.

- Q. The other one? A. I don't know what the other one carries.
- Q. Does the fellow who carries the Dayton tires also carry Firestone and Goodrich tires? A. Not to my knowledge.
- Q. Do any of those three stations have advertising signs outside? A. Yes.
- Q. Some of them have Firestone or Goodrich signs outside of their station, is that right? A. One has Goodrich. But the other two have Dayton. I don't know what the other has. I don't know what he handles.
- Q. How well do you know the operators of these three stations? A. Quite well.
- Q. These are the fellows you meet with at these meetings, is that right? (5169) A. Yes.
- Q. Are they lessees, too? A. No. Two of them are not third-party stations as mine is.
  - Q. That is the fellow with the Dayton tire? A. Dayton.
- Q. And the other one you don't recognize. A. That's right.
- Q. How many stations of all kinds are in your town? Are there a number of them? A. The last count I had was around 26 stations.
- (5170) PAUL L. MAYERS was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

#### Direct examination by Mr. Lorenzen:

- Q. Do you want to give your full name and home address to the reporter, please? A. Baul L. Mayers, 2214 Scudder Street, St. Paul, Minnesota.
  - Q. What is your business? A. Texaco dealer.

- Q. Where is your station located? A. 2307 Como Avenue West.
  - Q. That's in St. Paul also? A. In St. Paul.
  - Q. You lease that station from- A. I do.
  - Q. —Texas Company? A. Texas Company.
- Q. And for how long have you been a lessee dealer? A. Twelve years.
- Q. About what is the gasoline gallonage of your station? A. 15,000 average for the month.
- Q. Before I forget it, what division is your station located in? (5171) A. That's Minneapolis division.
  - Q. Minneapolis division! A. Minneapolis Division.
- Q. Do you know, is that under the Chicago territory?
  A. No—
- Q. Central territory with head offices in Chicago, do you know? A. No, head offices in Minneapolis.
- Q. You don't know what's over your division? A. No, I don't. It's a five-state area, that I know, and in Minneapolis is their office.
- Q. Now, do you handle any TBA at your station? A. I do.
- Q. Will you tell us why you handle it? A. Public acceptance, and to make money; and it helps me in my gasoline business.
- Q. You say "public acceptance." You mean the public wants a one step service type of station? A. Right, sir.
  - Q. So you find it helpful to have TBA along with your gasoline business? A. That's right.
  - Q. Have you had any understanding during the time you've been a lessee dealer as to the Texas Company's TBA policy and its TBA program! (5172) A. They recommend that you handle major tire and accessories, and I happened to take Firestone, as I like them.
- Q. Do they also tell you you can buy at other places if you want? A. Any place I want to, yes.

Q. And you have in fact done so, haven't you! A. I have.

Q. Now, do they recommend to you the Firestone or

Goodrich line? A. They do.

Q. Now, has anyone from the Texas Company ever intimated to you that if you didn't handle the Firestone or Goodrich completely, or at least in part, that your lease would be cancelled? A. No, they haven't.

Q. Or that they would treat you badly in any other way?

A. No.

Q: Will you tell me who your suppliers of TBA items are? A. M & L Motor Supply, St. Paul.

Q. Now, that's not connected with either Firestone or

Goodrich, is it? A. No.

Mr. Dias: Excuse me. Would you mention what it is that you buy from each place as you go along, please?

The Witness: M & L Motor Supply—accessories and (5173) tires. They handle Gates.

Q. Now, you buy substantially all of your accessories from M & L, don't you? A. M & L, right.

Q. All right. What other? A. Midway Dealers—is a

Firestone dealer.

Q. And what do you buy from him? A. I buy some Firestone tires, and some accessories.

Q. But not nearly as many as you buy from M & L, do

you! A. That is, accessories I buy-

- Q. Accessories? A. I buy more from M & L. Firestone Store, tires only.
- Q. How about Standard Auto Parts? A. A few accessories.
  - Q. National Battery Company? A. Batteries.

Q. The National battery? A. I buy all my batteries—some of my batteries from them. I handle Delco and National batteries.

Q. And the National batteries you buy from the National Battery place? A. Right.

Q. Now, from whom do you buy the Delcos? A. M & L. Motor Supply.

Q. Do you buy anything from D. Riley Company? A. That's Bowes. I handle accessories.

(5174) Q. You handle the Bowes line of radiator hose? A. I do.

Q. And anything else? What else do they make? Battery cables? A. Cables—

Q. Thermostats? A. Thermostats, and radiator solvent, fuses, light bulbs. I don't handle his fan belts. I handle Gates' fan belt.

.. Q. And what—do you buy anything from the W. S. Smith Tire Company? A. I buy tires, new and recaps.

Q. What kind? A. Goodyear.

Q. You have half of your recapping done at W. S. Smith, do you? A. Yes, I do.

Q. And that's a Goodyear recap process? A. Goodyear distributor, yes.

Q. Now, do you stock any tires other than Firestone?
A. I have U. S. Royal, around six of them right now.
Goodyear, about five.

Q. You have about six Firestone? A. Around six to seven Firestone in stock.

Q. Now, do you take these U. S. and—do you keep these U. S. and Goodyear tires openly displayed? (5175) A. I do.

Q. Where anybody can see them if he wants to? A. Yes.

Q. How about your Delco and National batteries? Are they openly displayed? A. I have those on the shelf, right in the office.

Q. Where all of your other TBA items are displayed?

Q. Do you display all of your TBA items, no matter from what source you buy-them? A. I do.

Q. Are they in plain view? A. Yes, they are.

Q. Texas. Company employees know about them? A. Yes, they do.

Has any threat ever been made to you that if you didn't stop handling or displaying the Delco and National battery and the U. S. and Goodyear tires, and the Gates fan belts, and other accessories not in the Firestone and Goodrich line, that your lease would be cancelled or that the Texas Company would treat you badly in any way? A. No, sir.

Q. Nothing like that has ever happened? A. No, sir.

Q. Have you ever been told to hide any of this TBA which you (5176) didn't buy from Firestone or Goodrich? A. I don't know why I should.

Q. You haven't been told that? A. No.

- Q. Now, will you tell us why you handle Firestone tires?

  A. I handle Firestone tires because it's a public acceptance, and I think it's the best tire made.
- Q. You get good service on them? A. Very good. I make all my own adjustments.

Q. Is that a— A. And that's—

Q. —a big advantage to you? A. Yes, it is.

Q. Are those the reasons why you handle Firestone?

A. Yes, sir. I make money.

Q. And you make money on them? A. Right.

Q. Do you handle the Firestone because you're afraid not to do it on account of the Texas Company might treat

you badly if you didn't? A. No. I handle them on my own accord.

Q. Do you feel free to handle any TBA that you feel like handling? A. I do handle any accessories.

Q. And your test is whether or not it becomes—it makes

you money? (5177) A. I like to make money.

- Q. Don't we all. And that is also the reason why you handle the Delco batteries and the National batteries? A. I get a better deal with Delco and National than I do with Firestone.
  - Q. And so you handle their batteries? A. Right.
- Q. Have you obtained any help from the Texas Company in connection with merchandising your TBA? A. I attend all their meetings.

Q. Does that help you? A. Yes, it does.

Q. What sort of help do you get there? A. How to display articles and how to lead up to a sale and close the deal. I like the way they conduct their meetings.

Q. Do you find it helpful to you—find these suggestions helpful to you in selling the TBA which you do not obtain from Firestone or Goodrich? A. Yes, it does.

Q. Equally helpful for all of it? A. Yes.

- Q. I don't think you mentioned the source from which you (5178) obtain the U.S. Royal tires. Is that Milton Rosen? A. Milton Rosen Tire Company, U.S. Royal distributor.
- Q. All right. Now, let's go back to those meetings. In the course of those meetings have you had occasion to become acquainted with other dealers in your neighborhood! A. Yes, I have.
  - Q. How much territory do these meetings take in? I mean, from what territory do the dealers get gathered in? A. It's the Twin City area, St. Paul area, and that includes

### Paul L. Mayers, for Respondents-Cross

Stillwater and the suburban area. It's about a 25-mile radius.

Q. And do you have any larger meetings in fall and spring? A. We do.

Q. And those include more dealers? A. Yes.

Q. Do they include the Minneapolis dealers? A. Yes.

Q. You have joint meetings with them? A. Joint meetings, right.

Q. Now, in any of those meetings has any representative of the Texas Company ever made any threat to you or to dealers generally with respect to the type of TBA that the Texas Company sponsors? A. They have not.

Q. Ever suggested that any leases would be cancelled due to— (5179) or that the dealers would receive any bad treatment? A. No.

Q. If they didn't handle the Firestone or Goodrich line, or part of it? A. No, sir.

Q. In the course of these meetings have you had a chance to talk to the dealers? A. Yes, I have.

Q. Other Texaco dealers! A. Yes.

- Q. You've become acquainted with them? A. Yes, I have.
- Q. Have any of those dealers ever complained to you that the Texas Company has treated them—threatened them with lease cancellation or bad treatment in any way if they did not handle the Firestone or Goodrich line? A. No, they haven't.

Mr. Lorenzen: That's all.

#### Cross-examination by Mr. Dias:

Q. As I understand it you don't handle Firestone batteries, is that right, Mr. Mayers? A. No, I don't.

Q. Now, let's see. You went into business back in about 1946, is that correct? (5180) A. Right.

#### Paul L. Mayers, for Respondents-Cross

Q. Had you been in the gasoline business before that time? A. I was out of the gas business for four years during the war.

Q. And prior to the war had you been in the gasoline station business? A. Standard Oil Company.

Q. And for how many years! A. Five years. Mobile, three. Northwest, three.

Q. That's far enough. Did you handle Firestone products while you were in those stations? A. No, I did not.

Q. When did you develop your taste for Firestone?

A. When I went into the Texaco station twelve years ago.

Q. Did you in the beginning carry a full line of Firestone tires, batteries and accessories? A. I did at first, yes.

Q. And for how many years, do you recall? A. Roughly three years.

Q. And did you then start discontinuing some of their products? A. Yes, when I found out some of it wasn't good.

Q. And which was it that wasn't so good? A. The batteries weren't so good. The batteries were lousy.

(5181) Q. And the plugs weren't so hot, were they?
A. No.

Q. You said no, did you? A. No.

Q. I mean, so the reporter can pick you up. A. I'm sorry.

Q. And which other products did you find faulty? A. Some of their accessories were not too good.

Q. Did you ever mention that to the Texas Company, the fact that you were having difficulty with the Firestone products? A. No, I didn't. I just went ahead and bought from whoever I wanted to.

Q. When you dropped the Firestone batteries and accessories and started buying others, you recall no conversation with a Texas Company man as to why you did that?

A. No. No.

- Q. However, you do like the tires and you continue to buy them? A. Yes, sir.
- Q. And you stock and carry quite a few, do you not?

  A. Yes.
- Q. Now, as of the present date, can you tell us roughly what your TBA inventory is? In other words, how many dollars worth of tires, how many dollars worth of batteries, and (5182) how many dollars worth of accessories do you carry in your station? A. My inventory would run approximately fifteen hundred.

Q. \$1,500.007 A. Right.

Q. And of that \$1,500.00, how much would be in the 60 to 70 Firestone tires? A. Around twelve.

Q. Twelve hundred, is that so? A. Right.

- Q. And at these dealer meetings, do you meet the same dealers all the time at the dealer meetings? A. Just about, yes.
- Q. And you've been meeting with them for a number of years? A. Right. Right. Every year.

Q. Once a year? A. Twice. Spring and fall.

- Q. After you've conducted your business, do they have some sort of a buffet or drinks, that sort of thing? A. Yes, they do.
- Q. It's a pretty nice night out? A. I always have a good time there.
- Q. Do you talk shop at that time, or do you just chat?

  A. We just chat.

### (5183) Redirect examination by Mr. Lorenzen:

Q. Mr. Mayers, you had this bad experience with the Firestone products, you say, about three years after you took on the station? A. Right.

Q. That's about 1949? A. Right.

Q. And you haven't handled any of them since? A. No, I haven't.

#### Paul L. Mayers, for Respondents-Recross

Q. Now, on your tire inventory, how many tires do you sell out of stock and how many tires do you sell on a pick-up basis? A. On a pickup basis I would say between 25 and 30—about 35% I would pick up.

Q. So all of the others, 65%, 70%, are sold out of stock?

A. Right.

Q. So you carry a fairly adequate stock for your needs?

A. I do.

Q. Now, do the items of accessories that you handle have a faster turnover in sales than tires? A. They do.

Q. So that your dollar volume of sales of accessories as against tires isn't measured by the difference in inventory, is it? A. No, it isn't.

#### (5184) Mr. Lorenzen: That's all.

#### Recross examination by Mr. Dias:

Q. When you pick up tires, don't you on occasion pick up Firestone too! You don't carry all sizes of Firestone in your station, do you! A. Firestone tires I pick up, yes.

Q. You pick up Firestone too! A. Oh, yes. U. S. Royal

and Goodyear.

Q. Yes, but also Firestone? A. And Firestone.

Q. Do you have any idea of what your monthly TBA sales are? A. You mean tires, batteries and accessories?

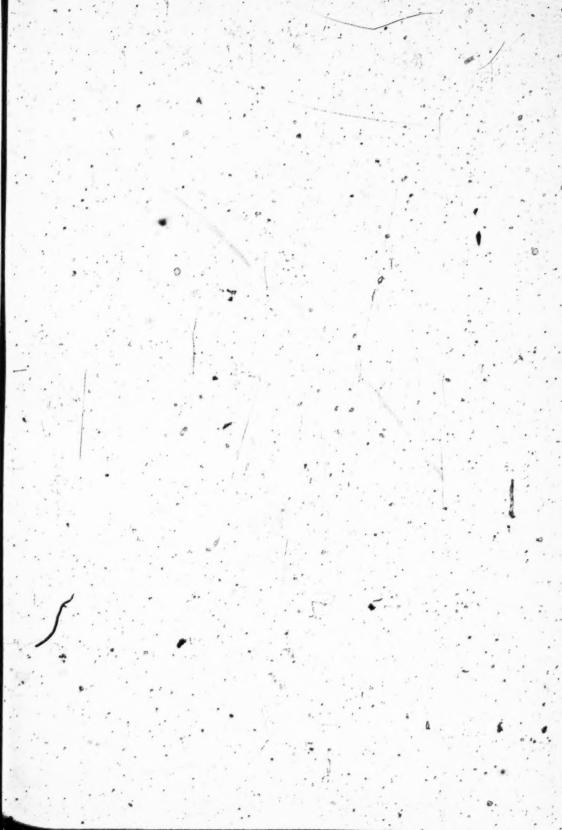
Q. Tires, batteries and accessories, yes. A. Close to one thousand a month.

Q. About a thousand a month? A. Yes.

Q. And can you tell us how much of that is in tires?

A. Between 400, 450 in tires.

Q. And can you break that down further and tell us how much of that would be Firestone tires? You sell more Firestone than the others do you not? A. Yes, I do. -I would say about 90% is Firestone.





# TABLE OF CONTENTS

•	PAGE
Complaint (January 11, 1956)	JA 1
Order Designating Hearing Examiner (January 11, 1956)	
Answer of Respondent The Texas Company (April 16, 1956)	JA 11
Answer of Respondent The B. F. Goodrich Company (April 16, 1956)	JA 19
Order Sustaining Interlocutory Appeal (November 28, 1956)	JA 23
Exception of Respondent The Texas Company (December 7, 1956)	JA 26
Exception of Respondent The B. F. Goodrich Company (December 12, 1956)	JA 27
Motion of Respondent The Texas Company (December 31, 1956)	JA 28
Answer of Counsel Supporting the Complaint in Opposition to the Motion of December 31, 1956, Filed on Behalf of Respondent The	>
Order Denying Motion by Respondent The	JA 30
Addresses and Employers of Parties Interviewed But Not Called as Witnesses (Japan)	1.
ary 9, 1957)	JA 31

The second secon	PAGE
Motion to Strike of Respondent The Texas Company (November 8, 1957)	JA 32
Supplement to Motion to Strike of The Texas Company (November 19, 1957)	JA 69
Motion to Strike of Respondent The B. F. Good- rich Company (December 23, 1957)	JA 76
Order Disposing of Motions to Strike Certain Testimony and Exhibits Filed by the Respondents (January 2, 1958)	JA 100
Motion of the Texas Company to Withdraw Issues and to Strike Evidence (February 7, 1958)	JA 108
Order Denying Motion of the Texas Company to Withdraw Issues and to Strike Evidence (February 24, 1958)	JA 113
Interlocutory Appeal by Respondent The Texas Company from Order of the Hearing Exam- iner Denying Its Motion to Withdraw Issues and to Strike Evidence (March 6, 1958)	JA 115
Order Denying Interlocutory Appeal (March 26, 1958)	JA 127
Proposed Findings of Fact and Conclusions Filed by Respondent The Texas Company (April 1, 1959)	JA 129
Proposed Findings of Fact, Conclusions of Law, and Order—Counsel Supporting the Com- plaint (April 1, 1959)	JA 152

	PAGE
Initial Decision (October 23, 1959)	JA 153
Appeal Brief of Counsel Supporting the Complaint (Page 23) (February 12, 1960)	JA 172
Order Remanding Proceeding to Hearing Examiner (March 9, 1961)	JA 174
Opinion of the Commission (March 9, 1961)	JA 175
Order Setting Hearing Pursuant to Remand by the Commission (June 20, 1961)	JA 187
Order Cancelling Hearings (July 10, 1961)	JA 188
Order Directing Proceedings on Remand to be Conducted Expeditiously and Setting Date for Filing Initial Decision (June 19, 1962)	JA 189
Order Setting Hearings (June 27, 1962)	JA 191
Motion of Respondents (July 2, 1962)	JA 193
Order Denying Respondents' Motion to Cancel Hearings and Requiring Certain Disclo- sures (July 11, 1962)	JA 199
Initial Decision (September 24, 1962)	JA 200
Petition of The B. F. Goodrich Company for Review (October 12, 1962)	JA 234
Petition of Texaco Inc. for Review (October 12, 1962)	JA 239
Order Granting Petitions For Review (November 13, 1962)	JA 246

	PAGE
Exceptions Filed Pursuant to Rule 4.21 on Behalf of Texaco Inc. (Formerly The Texas Company) (January 8, 1963)	JA 247
Texaco's Motion to Disqualify Chairman Dixon (February 18, 1963)	JA 287
Order Denying Motion to Disqualify (February 26, 1963)	JA 290
Memorandum of Chairman Dixon in Response to the Motion of Respondent Texaco, Inc., That He Withdraw From This Proceeding	JA 291
Motion of Texaco Inc. for Leave to File Memorandum Amplifying Answers to Certain Questions Asked by Commissioners During Oral Argument (April 11, 1963)	JA 293
Memorandum of Texaco Inc. Amplifying Answers to Certain Questions Asked by Commissioners During Oral Argument (April 11, 1963)	JA 294
Decision and Order (April 15, 1963)	JA 302
Excerpts from Testimony	JA 304
Petition to Review and Set Aside an Order of the Federal Trade Commission (Texaco Inc.) (June 12, 1963)	JA 2404
Petition to Review and Set Aside an Order of the Federal Trade Commission (The B. F. Goodrich Company) (June 17, 1963)	JA 2422

# TESTIMONY

# Witnesses for the Commission:

. W.		•	•		PAGE
Maurice A. V	Volfe:				
	Direct	*		JA 307,	JA 1317
	Cross			JA 313,	JA 1322
	Redirect		JA 315.	JA 419,	JA 1322
	Recross			•	JA 422
					and the same
Charles R. F	rohlin:		1.		
	Direct		,		JA 318
	rohlin: Direct Cross				JA 319
Ben Halsell:					7.
	Direct	<b>.</b>		JA 322,	JA 1310
	Cross			JA 323,	JA 1310
	Redirect	JA 333,	JA 397,	JA 417,	JA 1316
* · · * · ×	Recross				JA 410
S. C. Bartle					
		^ ·			
	Cross			JA 391,	JA 1308
	Redirect			JA 396,	JA 1309
				5	
George H. C	lenn:				14
	Direct			JA 423,	JA 1295
	Cross			JA 432,	JA 1323
	1				• .
Joseph A. I	Ioban:				
	Direct		JA 434	, JA 486,	JA 1336
*	Cross			JA 492,	JA 1344
	Redirect			JA 497	JA 1349

	PAGE
James L. Doss:	,
Direct	JA 499
Cross	JA 513
RedirectJA 51	9, JA 689
Recross	JA 695
Donald J. Knight:	
Direct	JA 521
Cross	JA 527
Redirect	JA 528
	×
Arne L. Carlson:	JA 531
Direct	
Redirect ·	JA JA
Hubert J. Reichert:	
Hubert J. Reichert: Direct	JA 542
Arthur V. Richmond:	
Direct	JA 545
Cross	JA 554
Redirect	
· ·	
Joseph C. Arey:	JA 563
Direct	JA 568
Cross Redirect	JA 508
Kedirect	JA 570
Harold A. Gehrke:	
Direct	JA 570
Cross	
Redirect	JA 584
Arthur Edelson:	
Direct	JA 585
Cross	
Redirect	JA 618
Redirect	JA 620

	PAGE
Jim Abernethy:	
Jim Abernethy: Direct	JA 622
Cross	JA 626
Irving M. Chanenson:	
Direct	JA 628
Cross	JA 642
Redirect	JA 652
	. )
Carl H. Olsen:	
Direct	JA 652
Cross	JA 657
Redirect	JA 662
Recross	JA 664
~	. 0.
John O'Keefe:	0
Direct	
Cross	JA 669
Francis Dwyer:	
Direct	JA 670
Cross	JA 675
Redirect	JA 678
Recross	JA 683
SETTING TO SET STATE OF STATE	1
Theodore H. Shiff, Jr.:	71 001
Direct	
Cross	· ·
Redirect	JA 689
Raymond P. Jennings:	TA 000
Direct	JA 696
Think A. Donald.	·
Frank A. Brusek:	TA 709
Direct	JA 703